Court File No.: C59074

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

APPEAL BOOK AND COMPENDIUM OF THE APPELLANT
VOLUME I OF V

March 6, 2015

Dr. Denis Rancourt
(Appellant)

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Court File No.: _____

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

NOTICE OF APPEAL

July 4, 2014

Dr. Denis Rancourt
(Appellant)

THE DEFENDANT, DENIS RANCOURT, APPEALS to the Court of Appeal from the orders of Mr. Justice Michel Charbonneau, dated June 5 and June 6, 2014, made at Ottawa, Ontario, and also appeals the costs decision as to quantum and scale of costs. The impugned final judgement relates to damages, costs of trial, and a take-down and permanent-injunction order in a defamation action.

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Ordering a new trial of the action with a new judge and jury;

2. Ordering that costs of the impugned trial be set aside as unjust, or awarded in favour of the defendant.

Costs of the appeal and other

3. The costs of this appeal on an appropriate scale;

4. Such further and other relief as the appellant may advise and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

OVERVIEW

1. This appeal raises fundamental questions about:
   (a) the sufficient conditions that give rise to a reasonable apprehension of bias, regarding financial and institutional ties, in-court procedural decisions, the charge to the jury, and express findings from the bench;
   (b) the right of a litigant to argue an abuse-of-process remedy in a defamation trial, which was pleaded in pleadings that were not stuck out;

(c) the right of a defendant to have his pleaded defences and remedies considered by the jury in a defamation trial;

(d) whether the charge to the jury in a defamation trial can limit the jury members to either accept or reject specified meanings of the words complained of;

(e) whether an imbedded video that is an integral part of a web article ("blogpost") complained of and that is essential to the context of the alleged libel in a defamation action must be shown to the jury at trial;

(f) the limiting of a defendant's freedom of expression by a permanent injunction that forbids future unknown statements about the plaintiff, following a successful defamation action;

(g) costs policy principles, the *Charter* principle of freedom of expression, and the common law of awarding costs, for costs of a defamation trial against an impecunious defendant when there are no costs to the plaintiff.

BACKGROUND — CIRCUMSTANCES AND EVENTS AT TRIAL

2. This appeal is from judgments at trial of a defamation action filed in 2011. A pre-trial recusal motion was heard and decided on May 7, 2014. The trial judge did not recuse himself. The trial was held on 13 days or half-days between May 12, 2014, and June 6, 2014. Two further requests for recusal were made following in-court events during trial.

3. The defamation action is primarily about one blogpost published by the appellant (defendant) on February 11, 2011 — following the release of access to information documents — entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?".

4. In the blogpost it is stated that the access-to-information documents suggest that Professor St. Lewis (respondent and plaintiff) acted like the "house negro" of Mr. Rock (the president of the University of Ottawa). The trial judge did not allow the access-to-information documents or any facts in evidence to be considered by the jury in support of the pleaded fair comment defence.

5. The term “house negro” was expressly defined in the blogpost via a 1963 speech by the iconic civil rights leader Malcolm X, which was embedded in video-form in the blogpost. The trial judge allowed that the jury not be shown the said video, which is an integral and essential part of the blogpost complained of.

6. The University of Ottawa is funding the plaintiff’s litigation “without a cap”. The Statement of Claim is for $1 million in damages and makes no claim of any actual damage to reputation, nor was any evidence for actual damage to reputation produced during discovery and prior to trial. The common law expressly allows a defendant to argue an abuse-of-process remedy in such circumstances of *no or minimal actual damage to reputation* — the “Jameel” remedy.

7. The trial started on May 12, 2014, with jury selection, followed by several Voir Dires, and an intervening party’s (University of Ottawa’s) motion to quash summonses to witnesses. The jury heard the opening statements of the parties on May 15, 2014. Witness testimony for the plaintiff was given in the afternoon of May 15, 2014, and continued for several days.

8. During his opening statement to the jury, the defendant explained his fair comment defence, and attempted to explain his abuse-of-process remedy when he was barred from doing so by the judge. The judge excused the jury and summarily struck out the defendant’s pleaded “Jameel” abuse-of-process remedy while the defendant was attempting to explain this remedy and the broad doctrine of abuse-of-process to the jury.

9. Following the summary striking out of his pleadings that had occurred on May 15, 2014, without abandoning his defence, the defendant expressly walked out of the courtroom on the morning of May 16, 2014, after arguing that the summary striking out was egregious and was additional evidence for a reasonable apprehension of bias. Thus, the defendant chose to be silent moving forward until he returned to the courtroom to hear

the jury verdict on June 5, 2014, and for the two final days of argument at trial when the motion for a permanent injunction and other matters were heard and decided.

10. At no time did the defendant abandon his defence or his party status. The defendant was treated like a party by the judge on return to the courtroom to argue the take-down and permanent-injunction order, except that in-court statements by the trial judge frustrated the defendant's access to exhibits and to court notifications, which occasioned a renewed request made on June 5, 2014, that the judge recuse himself for reasonable apprehension of bias.

11. The jury awarded $100,000 in general damages, and $250,000 in aggravated damages. Although strenuously argued by the plaintiff, no punitive damages were awarded. After releasing the jury on June 5, 2014, the judge entered the jury verdict, and ordered that costs would be awarded to the plaintiff (with quantum and scale to be determined later), and on June 6, 2014, made a take-down and permanent-injunction order.

JUDGE ERRED BY SUMMARILY STRIKING OUT THE DEFENDANT'S PLEADED ABUSE-OF-PROCESS REMEDY

12. The trial judge erred by summarily striking out a defendant's pleaded abuse-of-process remedy, while the defendant was attempting to explain the said abuse-of-process remedy to the jury during opening statements.

13. The abuse-of-process remedy (including the "Jameel" remedy as the main strand) had been argued and not struck out in a Voir Dire — heard and decided prior to opening statements — that struck out different and distinct paragraphs from the Statement of Defence.

JUDGE ERRED BY INSTRUCTING THE JURY THAT THERE WERE NO DEFENCES TO CONSIDER

14. The trial judge erred in his charge to the jury by instructing the jury that "The defendant has not introduced any evidence establishing a defence therefore there is no defence for you to consider."

15. In fact, the defendant had explained his pleaded fair comment defence to the jury in his opening statement, and had described the true facts relied on as including the SAC ("Student Appeal Centre") report, the plaintiff's evaluation report of the SAC report, and the access to information documents released by the SAC, all of which were linked in the blogpost complained of.

16. The said true facts relied on were amply proven by the plaintiff's evidence, and by the evidence of her witnesses. In addition, most or all of the said true facts relied on were of public knowledge to the readers of the U of O Watch blog, had been posted to the internet by the sources of the facts, and had been the subject of past blogposts and media reports as early as 2008.

17. Thus, the trial judge did not have the jurisdiction to instruct the jury that there was no defence for it to consider, but rather had a duty to explain the law of the fair comment defence, and the evidence that related to this defence. In the alternative, it was inconsistent with the interests of justice and incompatible with the *Charter* principle of freedom of expression, and thus an error of law, for the trial judge to instruct the jury that there was no defence for it to consider.

JUDGE ERRED BY LIMITING THE JURY TO EITHER ACCEPT OR REJECT SEVERAL SPECIFIED MEANINGS OF THE WORDS COMPLAINED OF

18. In the common law of defamation, the jury decides if the words complained of, in their ordinary meaning and in their context, are defamatory to a reasonable person. The jury is

the only arbitrator of the ordinary meaning(s) of the words complained of, in their context.

19. The trial judge erred by putting questions to the jury that involved answering, for each alleged "sting" (or statement) complained of, if yes or no the sting carried each of several meanings alleged by the plaintiff. In this scheme, the only way that the jury can answer whether or not a particular sting is defamatory, is to answer if the particular sting carries each of the meanings alleged by the plaintiff, and, if the sting carries the alleged meaning, whether the sting is therefore defamatory.

20. The said question scheme imposed on the jury by the trial judge to determine whether or not a given alleged "sting" (or statement) is defamatory:

    (a) suggests specific meanings alleged by the plaintiff;

    (b) constrains the jury to solely the meanings alleged by the plaintiff; and

    (c) artificially multiplies the number of possible ways that a given sting can be found to be defamatory.

    Such a scheme is inconsistent with the common law of defamation, the role of the jury, and by design cannot achieve a just balance between freedom of expression and protection of reputation. It is incompatible with the *Charter* principle of freedom of expression.

JUDGE ERRED BY ALLOWING THE JURY TO NOT BE SHOWN AN IMBEDDED VIDEO THAT WAS AN INTEGRAL AND ESSENTIAL PART OF THE BLOGPOST COMPLAINED OF

21. In defamation, the context of the words complained of is essential. The context prominently includes the medium of publication. An audio-visual document, central to the alleged libel, cannot be reduced to a transcript for the purpose of determination of defamation.

22. The main (February 11, 2011) blogpost complained of contains a video imbedded in the main text of the blogpost, which was expressly included to provide the "definition" of the term "house negro" — to provide the meaning of the term as used in the blogpost. The said video of 1-minute and 58-second duration, entitled "Malcolm X: The House Negro and the Field Negro", is entirely about the meaning of the term "house negro", and is of a speech recognized by scholars and experts as providing the modern meaning of the term.

23. The trial judge erred by referring the jury to meanings alleged by the plaintiff while not referring the jury to the meaning of the term "house negro" given in the context of the blogpost, where the term is expressly defined by use of the imbedded video.

24. The trial judge erred by allowing the jury to not ever be shown the imbedded video that provided the semantic and societal meaning of the pivotal term "house negro", in the context of the main blogpost complained of. This, despite the fact that the defendant had stressed the importance of the video in his opening statement.

JUDGE ERRED IN ORDERRING PERMANENT INJUNCTIONS AND TAKE DOWNS

25. The trial judge erred in making a permanent injunction restraining the defendant from publishing "any of the statements the jury has found to be defamatory" (paragraph-1 of the June 6, 2014, Order). It has not been determined that, in the different context of any supposed new publication, the said statements would be defamatory and without defence in law, as can only be determined by a trial on merits. An injunction against unknown future publications containing specified statements, or words from specified statements, is inconsistent with jurisprudence in the factual circumstances of the case. The test applied by the trial judge is incompatible with the common-law balance between freedom of expression and protection of reputation, and incompatible with the *Charter* principle of freedom of expression.

26. The trial judge erred in making a permanent injunction restraining the defendant from publishing "any defamatory statement about the Plaintiff" (paragraph-2 of the Order). An injunction against unknown future statements is inconsistent with jurisprudence in the factual circumstances of the case. The test applied by the trial judge is incompatible with the common-law balance between freedom of expression and protection of reputation, and incompatible with the *Charter* principle of freedom of expression.

27. The trial judge erred in ordering the defendant "to provide reasonable assistance to the Plaintiff" regarding removal or take down in databases, caches, and on "websites operated by third parties" (paragraph-4 of the Order). The order is ill-defined, impractical, lacking jurisdiction, overreaching, and contrary to *Charter* principles. The order extends beyond the common-law remedies for defamation, and is inconsistent with jurisprudence. It amounts to forcing the defendant to participate in convincing third parties to take down their own published materials that, in the different context of the third-party's publication, have not been determined to be defamatory and without defence in law, as can only be determined by a trial on merits.

28. The trial judge erred by ordering that the plaintiff "can apply for an Order requiring any person or company within the jurisdiction of this Court" to "remove or take down the articles" containing the statements found defamatory "or that contains a hyperlink to Exhibits #3 and #4" (paragraph-5 of the Order). It has not been determined that, in the different context of the supposed third-party's publication, the said statements would be defamatory and without defence in law, as can only be determined by a trial on merits. The Order also involves removing articles for containing specified hyperlinks, an absurd proposition akin to burning books for citing specific works in the references or footnotes.

29. The trial judge erred by making a permanent injunction restraining the defendant "from contacting or communicating with the Plaintiff, directly or indirectly, in any way or by any method" (paragraph-6 of the Order). There was no evidence that could reasonably justify this Order.

30. The trial judge erred by not giving due consideration and/or sufficient weight to the new evidence of exhibits #R24 and #R25 in making the permanent-injunction Order.

JUDGE ERRED BY NOT RECUSING HIMSELF FOR REASONABLE APPREHENSION OF BIAS

31. The trial judge erred by not recusing himself for reasonable apprehension of bias, following a pre-trial motion for recusal, and following in-court recusal requests pursuant to events at trial. The factual circumstances, the systemic and institutional setting, and the in-court events separately or together merited a recusal, in the interest of justice.

1. Pre-Trial Motion for Recusal

32. The evidence supporting a reasonable apprehension of bias presented in the pre-trial motion for recusal includes:

(a) The undisputed fact that the University of Ottawa is entirely funding the plaintiff's costs in the action;

(b) The undisputed fact that the University of Ottawa has numerous ties to the lawsuit, and intervened both in a defendant's motion to end the action and at trial;

(c) The fact that the University of Ottawa is expressly named in the Statement of Defence, in relation to both a defence and an abuse-of-process remedy;

(d) The fact that the subject matter of the lawsuit can negatively affect the reputation of the University of Ottawa, and thus the financial value of its scholarship funds and corporate image;

(e) The undisputed fact that the trial judge has all his university degrees (two degrees) from the University of Ottawa;

(f) The undisputed fact that the trial judge is a frequent and annual donator to the University of Ottawa;

(g) The undisputed fact that the trial judge was a founding co-partner in a law firm with the judge that was the main case management judge in the action;

33. Thus, there is a shared financial interest between the trial judge and the University of Ottawa, a shared reputational interest, and evidence for an apparent emotional tie.

34. The evidence supporting an appearance of bias occurs in circumstances where:

(a) The now Regional Senior Justice James McNamara in Ottawa had endorsed that he recused himself after careful consideration solely for having a degree from the University of Ottawa, in a separate case where the university was a party;

(b) The defendant had requested that then Regional Senior Justice Charles Hackland assign a judge from outside East Region and having no ties to the University of Ottawa to the case;

(c) The University of Ottawa has the only law school in the region, and the two major and largest law firms in Ottawa (Gowlings and BLG) are both involved in the case.

2. In-Court Request for Recusal Pursuant to Summarily Striking Out Pleadings

35. Following the in-court events of May 15, 2014, wherein the trial judge summarily struck out the defendant's pleaded "Jameel" remedy, on May 16, 2014, the defendant argued that the said events were egregious and constituted significant additional evidence in support of reasonable apprehension of bias.

36. The trial judge did not respond to the newly presented argument for recusal.

3. In-Court Request for Recusal Pursuant to Events at Trial to June 5, 2014

37. On June 5, 2014, the defendant made a fresh request for recusal based on the additional evidence supporting a reasonable apprehension of bias that includes:

(a) The trial judge's instructions to the Registrar on June 4, 2014, to not allow the defendant to consult trial exhibits in the courtroom on June 4, 2014, during the open-court hours to await the jury verdict;

(b) The fact that in open court on June 5, 2014, the trial judge expressly denied the defendant the "courtesy" of the court of informing the defendant of the date and time at which the jury would render its verdict, while the plaintiff was automatically granted the benefit of this practice;

(c) The fact that in open court on June 5, 2014, the trial judge expressly denied the defendant the procedural right to receive copies of all court-filed documents at trial, and all communications between the plaintiff and the trial judge.

38. These measures imposed by the trial judge interfered with the defendant's ability to return to the court and participate in the trial and trial motions.

4. Further Evidence at Trial for Reasonable Apprehension of Bias

39. Further events at trial that constitute evidence in support of reasonable apprehension of bias include:

(a) The spoken charge to the jury, which needlessly contained numerous recommendations for findings, given from the judge's position of authority;

(b) The June 6, 2014, oral "Reasons" for the permanent-injunction and take-down Order that contained many findings regarding the character of the defendant, alleged defendant's improper motives, and incorrect findings of fact, which are based on hearsay and which are not reasonably supported by evidence at trial;

(c) The manner and circumstances in which the defendant was ordered to attend a "show cause" hearing (scheduled on September 25, 2014) to convince the trial judge that there should not be a judgement of contempt of court.

5. Need for a Rule or Test for Automatic Recusal

40. There should be an automatic recusal rule or test for cases of a judge's established ties (such as donor status, alumnus status) with a major institution within the legal establishment of the region when that institution is significantly involved in the litigation, as a party, or intervening-party, or non-party. The Court has the jurisdiction to develop such a rule or test.

41. There should be an automatic recusal rule or test for cases of apparent shared financial interests (such as judge's donations and institutional funding of the lawsuit) or apparent emotional or personal ties (such as institutional reputation in-play and alumnus-status of the judge) between a trial judge and a party, or non-party substantively involved in the litigation. The Court has the jurisdiction to develop such a rule or test.

JUDGE ERRED BY AWARDING COSTS OF TRIAL TO THE PLAINTIFF

42. The trial judge's June 5, 2014, Order contains an order that the defendant pay costs of the trial in the action on a scale and in an amount to be determined. At the time of serving this Notice of Appeal, the costs decision as to scale and amount was not yet made. Thus, it is anticipated that the detailed arguments will be made to the Court in the appeal factum, and/or at the appeal hearing.

43. Depending on the outcome of the costs decision, the grounds in appealing the trial judge's costs decision can be anticipated to include the following:

(a) The costs award is contrary to the policy principles governing costs, regarding the indemnity principle, and the overriding consideration of whether a costs award is fair and reasonable in the particular circumstances;

(b) The costs award is contrary to the *Charter* principle of freedom of expression, regarding finding a just balance between freedom of expression and protection of reputation;

(c) The costs award blocks or frustrates the defendant from access to justice regarding appeal.

44. Specific grounds include:

(a) It is undisputed that the Plaintiff's costs in this private litigation are being entirely paid by the University of Ottawa on a voluntary basis and without any conditions — as such, there is nothing to indemnify;

(b) The funding agreement with the University of Ottawa raises the prospect of double recovery of costs — a prospect that is not mitigated by any evidence on the record;

(c) The defendant is impecunious, and the plaintiff has known this for several years from ordered disclosures and from an out-of-court cross-examination on financial means and assets held on October 14, 2011;

(d) The plaintiff has publicly expressed to the media an absence of need for indemnity or damages as (*Ottawa Citizen*, June 5, 2014, Exhibit #R24):

> Money or no money, St. Lewis said she was happy at the closure.
> "It feels fabulous," she said.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Subsection 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

2. The orders appealed from are final orders from a trial heard in the Superior Court of Justice;

3. Leave to appeal is not required, except for the decision awarding costs of trial in the event that the main appeal is not allowed.

DATED: July 4, 2013

Dr. Denis Rancourt
Appellant

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JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.:

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

NOTICE OF APPEAL

Dr. Denis Rancourt
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Appellant

Court File No.: C59074

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

SUPPLEMENTARY NOTICE OF APPEAL

March 6, 2015

Dr. Denis Rancourt
(Appellant)

THE APPELLANT, DENIS RANCOURT, AMENDS THE NOTICE OF APPEAL dated July 4, 2014 (on the header page), in the following manner:

1. The issue of "no consideration of the pleaded limitation defence" is added, on the grounds that: the trial judge had a duty to consider and determine whether the action was absolutely barred for the February 11, 2011, blogpost, due to failure to give notice within six weeks as prescribed by the *Libel and Slander Act*, and a duty to put the relevant question of fact (regarding reasonable discoverability of the impugned blogpost) to the jury.
2. The ground that the costs order creates an excessive chill on expression, which is incompatible with *Charter* and societal values, is expressly added to the issue that the costs order is contrary to *Charter* values regarding a balance between the guaranteed freedom of expression and protection of reputation. The so-called "chill" ground was previously implicit, now here stated explicitly.
3. The issue that there are several reversible errors in the costs decision is added, on the grounds that: the order is not fair and reasonable, evidence for impecuniosity was disregarded, and a fresh motion for recusal was not determined.
4. The issue of common law "reasonable apprehension of bias" is broadened, in the alternative, to include litigant-perceived bias as described in the international case law relating to the interpretation of the *International Covenant on Civil and Political Rights*, while maintaining all the same previous grounds regarding bias.
5. The ground that there is apparent bias in the process of the costs decision is added to the issue in the main appeal of (broadened) apparent bias; and the issue of an apparent bias in making the costs decision itself is added.
6. The issue that the trial judge summarily struck out the "Jameel" abuse-of-process remedy, during the defendant's opening statement to the jury, is abandoned, although the factual elements remain relevant to the issue of apparent bias.
7. The issue that "the judge erred by limiting the jury to either accept or reject several specified meanings (claimed by the plaintiff) of the words complained of" is abandoned.

DATED: March 6, 2015

Dr. Denis Rancourt
Appellant

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COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

SUPPLEMENTARY NOTICE OF APPEAL

Dr. Denis Rancourt
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Appellant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU	))	Thursday, the 5th day of June, 2014

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

ORDER

1. The Defendant Denis Rancourt is ordered to pay to the Plaintiff Joanne St. Lewis general damages for defamation in the amount of $100,000.

2. The Defendant is ordered to pay to the Plaintiff aggravated damages for defamation in the amount of $250,000.

3. The Defendant is ordered to pay to the Plaintiff pre-judgment and post-judgment interest on all amounts awarded in accordance with sections 128 and 129 of the *Courts of Justice Act*.

4. The Defendant is ordered to pay the costs of the trial of this action on a scale and an amount to be determined.

ENTERED AT OTTAWA
INSCRIT A OTTAWA
ON/LE JUIN JUN 05 2014
DOCUMENT # 1881
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

The Honourable Justice Michel Z. Charbonneau

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

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Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU	))	Friday, the 6th day of June, 2014

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

ORDER

1. The Defendant is permanently restrained from publishing or causing to be published, through the internet or by any method or medium of communication, either directly or indirectly, any of the statements the jury has found to be defamatory.

2. The Defendant is permanently restrained from publishing, or causing to be published, through the internet or by any other method or medium of communication, either directly or indirectly, any defamatory statement about the Plaintiff.

3. The Defendant is ordered to permanently remove (take down) the defamatory articles entered as Exhibits #3 and #4 and all other articles he has published about the Plaintiff that include any of the statements the jury has found to be defamatory and to remove all hyperlinks to Exhibits #3 and #4 in any articles he has published. The Defendant is ordered to permanently remove (take down) these articles from any website or electronic database where they are accessible, within 15 days of the date of this Order.

4. The Defendant is ordered to provide reasonable assistance to the Plaintiff in obtaining the removal or take down of the statements the jury has found to be defamatory from: Internet search engine caches (such as Google); any electronic database where the defamatory statements are accessible; and other websites operated by third parties.

5. In the event that the Plaintiff believes that the Defendant is in breach of this Order, in addition to any remedy that may be available, the Plaintiff can apply for an Order requiring any person or company within the jurisdiction of this Court who has notice of this Order, to remove or take down the articles containing the statements the jury has found to be defamatory or that contains a hyperlink to Exhibits #3 and #4. The Plaintiff can also apply to expand or otherwise change the terms of this Order on the ground that this Order has failed or is failing to achieve one or more of its purposes.

6. The Defendant is restrained from contacting or communicating with the Plaintiff, directly or indirectly, in any way or by any method.

The Honourable Justice Michel Z. Charbonneau

ENTERED AT OTTAWA
INSCRIT A OTTAWA
ON/LE JUIN JUN 06 2014
DOCUMENT # 1893
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

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Counsel for the Plaintiff

OTT_LAW\ 4396036\2

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU) Thursday, the 21st day of August, 2014

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

ORDER

THIS COSTS DECISION on the costs of the trial of the action was heard by written submissions.

ON READING of the Costs Submissions of the Plaintiff filed on June 25, 2014, the Response Submissions of the Defendant filed on July 4, 2014, and the Reply Submissions of the Plaintiff filed on August 1, 2014,

1. **THIS COURT ORDERS** the Defendant to pay costs to the Plaintiff in the amount of $444,895.00, inclusive of disbursements and taxes.

2. **THIS COURT ORDERS** the Defendant to pay to the Plaintiff post-judgment interest on the amount of costs awarded in accordance with section 129 of the *Courts of Justice Act* at a rate of 3% per annum.

3. **THIS COURT ORDERS** that the contempt hearing set for September 25, 2014, is cancelled.

4. **THIS COURT ORDERS** that the plaintiff may, within 20 days, bring a motion for contempt at a convenient date to be set by the trial coordinator after discussion with both parties.

The Honourable Justice Michel Z. Charbonneau

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

DENIS RANCOURT
Defendant
35 Simcoe Street
Ottawa ON K1S 1A3

Tel: (613) 237-9600 (h)
Email: denis.rancourt@gmail.com

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Court File No.: 11-51657

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

QUESTIONS FOR THE JURY
June 2, 2014

INDEX

A. ARE THE WORDS COMPLAINED OF IN FACT DEFAMATORY OF THE PLAINTIFF?

#1. Did Professor St. Lewis Act as Allan Rock's House Negro?

1. Do the words "**Did Professor Joanne St. Lewis act as Allan Rock's house negro?**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis lacks integrity.**"

Answer: Yes ✓ No ~~✓~~ 6/6

If the answer to question 1.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

(b) "**Professor St. Lewis was biased in the conduct and authoring of her evaluation of the SAC Report.**"

Answer: Yes ~~✓~~ No _____

2. If the answer to question 1.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff? 4/6

Answer: Yes ? No _____

(c) "**Professor St. Lewis acted in a servile manner toward President Allan Rock**". 6/6

Answer: Yes ✓ No _____

If the answer to question 1.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

difamatoire

TAB A(2)

#2. **<u>February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters</u>**

2. Do the words "**February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) **"Professor St. Lewis needs to be "outed" for acting in a servile manner toward President Allan Rock."**

Answer: Yes ✓ No _____ 6/6

If the answer to question 2.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

(b) **"Professor St. Lewis needs to be "outed" for acting in a servile manner toward the University of Ottawa."**

Answer: Yes ✓ No _____ 5/6

If the answer to question 2.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 5/6

(c) **"Professor St. Lewis needs to be "outed" for betraying Black people or other minorities for personal gain or advantage."**

Answer: Yes ✗ No ✓

If the answer to question 2.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

#2. (con't) Do the words "**February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) "**Professor St. Lewis needs to be "outed" for acting in an inauthentic manner toward the President Allan Rock.**"

Answer: Yes _____ No ✓

6/6

If the answer to question 2.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

 TAB A (3)

#3 **<u>The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom</u>**

#3. Do the words "**The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of President Allan Rock.**"

3 out 6 3rd

Answer: Yes _____ No ✓

If the answer to question 3.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

(b) "**Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of the University of Ottawa.**"

5 non 6

Answer: Yes _____ No ✓

If the answer to question 3.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

(c) "**Professor St. Lewis has acted in an abjectly servile and deferential manner to President Allan Rock.**"

5 non 6

Answer: Yes _____ No ✓

If the answer to question 3.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

#3. (con't) Do the words "**The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) "**Professor St. Lewis has acted in an abjectly servile and deferential manner to the University of Ottawa.**"

Answer: Yes _____ No _____

5 non 6

If the answer to question 3.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

37 TAB A(4)

#4 **The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university**

4. Do the words "**The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis acted in a servile manner toward University of Ottawa President Allan Rock (a white male).**"

Answer: Yes ✓ No _____

6/6

If the answer to question 4.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

6/6

(b) "**Professor St. Lewis acted in a servile manner toward the University of Ottawa.**"

Answer: Yes ✓ No _____

5/6

If the answer to question 4.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

5/6

(c) "**Professor St. Lewis acted in an inauthentic manner toward University of Ottawa President Allan Rock.**"

Answer: Yes _____ No _____

1 occ. 1 ind. 4 pers

If the answer to question 4.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

#4. (con't) Do the words "**The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) **"Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa."**

1 oui
1 indé.
4 non

Answer: Yes _____ No _____

If the answer to question 4.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

(e) **"Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of University of Ottawa President Allan Rock, the University of Ottawa or herself."**

6/6

Answer: Yes ✓ No _____

If the answer to question 4.(e) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

(f) **"Professor St. Lewis sold herself out to the President of the University of Ottawa."**

5/6

Answer: Yes ✓ No _____

If the answer to question 4.(f) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

5/6

Answer: Yes ✓ No _____

#4. (con't) Do the words "**The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(g) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report.**"

6/6

Answer: Yes ✓ No _____

If the answer to question 4.(g) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

TAB A(5)

#5. <u>The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration</u>

5. Do the words "**The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion, or other personal benefit or gain.**"

1 man
4 ind
1 oth

Answer: Yes _____ No _____

If the answer to question 5.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

(b) "**Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote her self interest or the interests of University of Ottawa President Allan Rock and/or the University of Ottawa.**"

3 men
2 ind.
1 oth

Answer: Yes _____ No _____

If the answer to question 5.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

(c) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report.**"

6/6

Answer: Yes ✓ No _____

If the answer to question 5.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

 TAB A (6)

#6. **The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**

#6. Do the words "**The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis participated in a high level cover up of wrongdoing.**"

Answer: Yes ✓ No _____

If the answer to question 6.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

(b) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____

If the answer to question 6.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

(c) "**Professor St. Lewis was dishonest in her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____

If the answer to question 6.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

#6. (con't) Do the words "**The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(d) "**Professor St. Lewis conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.**"

Answer: Yes ✓ No _____

6/6

If the answer to question 6.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

6/6

TAB A (7)

#7 **Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)**

#7. Do the words "**Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

(b) "**Professor St. Lewis was dishonest in conducting and authoring an evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

(c) "**Professor St. Lewis conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

TAB A(8)

exhibit F4

#8 **I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**

8. Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis acted in a servile manner toward President Allan Rock when conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 8.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

(b) "**Professor St. Lewis acted in a servile manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 5/6

If the answer to question 8.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 5/6

#8. (con't) Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(c) **"Professor St. Lewis acted in an inauthentic manner toward University of Ottawa President Allan Rock when conducting and authoring her evaluation of the SAC Report."**

3 non 3 ind.

Answer: Yes _____ No _____

If the answer to question 8.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

(d) **"Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC Report."**

3 non 3 ind

Answer: Yes _____ No _____

If the answer to question 8.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

(e) **"Professor St. Lewis lacks integrity."**

6/6

Answer: Yes ✓ No _____

If the answer to question 8.(e) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

B. LEGAL INNUENDO

1. Do the words "**Did Professor Joanne St. Lewis act as Allan Rock's house negro?**" bear the following legal innuendos when published to members of the Black community in Canada:

   (a) person who is a race traitor;

   (b) a person who is a pariah in the Black community;

   (c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

   (d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

6/6

2. Do the words "**The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university**" bear the following legal innuendo when published to members of the Black community in Canada:

   (a) person who is a race traitor;

   (b) a person who is a pariah in the Black community;

   (c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

   (d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

6/6

3. Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism**" bear the following legal innuendo when published to members of the Black community in Canada:

6/6

(a) person who is a race traitor;

(b) a person who is a pariah in the Black community;

(c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

(d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

TAB C

C. ACTUAL MALICE

Was there actual malice on the part of the Defendant Denis Rancourt? b

Answer: Yes ✓ No _____ b

TAB D

D. DAMAGES

1. If you have found any of the words complained of to be in fact defamatory, in what amount do you assess the general damages of the plaintiff?

$ 100 000

2. Should the plaintiff be awarded aggravated damages?

Answer "yes" or "no": Yes

If the answer is "yes", in what amount do you assess the aggravated damages of the plaintiff?

$ 250 000

3. Should the plaintiff be awarded punitive damages?

Answer "yes" or "no": NO

If the answer is "yes", in what amount do you assess the punitive damages awarded to the plaintiff?

$ 0

TAB E

E. GENERAL VERDICT

1. Do you find for the plaintiff or the defendant in this action?

Answer : plaintiff

2. If you find for the plaintiff, in what amount do you assess her general damages?

$ 100 000 k

3. Should the plaintiff be awarded aggravated damages?

Answer "yes" or "no": Yes

If the answer is yes, in what amount do you assess her aggravated damages?

$ 250 000 k

4. Should the plaintiff be awarded punitive damages?

Answer "yes" or "no": No

If the answer is yes, in what amount do you assess her punitive damages?

$ ~~0~~

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

Jury verdict
June 5/2014
See judgment in accordance thereto
on amended trial record
J.A. Ehrlich J.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

QUESTIONS TO THE JURY

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OTT_LAW\ 4375594\1

Joanne St. Lewis

Plaintiff

- and - Denis Rancourt

Defendant

Court File No. 11-51657

June 5/2008

In accordance with the verdict of the Jury rendered today & filed as exhibit 33 there will be judgment for the pl as follows:

1. The def. is ordered to pay to the plaintiff for defamation general damages in the amount of $100,000.00

2 - The def. is found to have acted with actual malice in publishing the defamatory words and is ordered to pay to the pl. aggravated damages in the amount of $250,000.00

3. Judgment to issue pre-judgment & post judgment in accordance with s. 128+129 of Cts of Justice Act

4. Costs to be determined as to quantum + scale -

J.

OTT_LAW\ 4024354\1

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

AMENDED TRIAL RECORD OF THE PLAINTIFF

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Richard G. Dearden (LSUC #019087H)
Anastasia Semenova (LSUC#60846G)

Counsel for the Plaintiff

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June 5/2014 53

1. Bill of Costs to be submitted by pl. on or before June 25th 2014. Def. to answer within 15 days of receipt & pl. may reply within 5 days thereafter.

2. Show cause hearing concerning Contempt of def. to be heard Sept 25/2014 at 10 AM

J.

TYPED COPY
PREPARED BY THE APPELLANT

ENDORSEMENT OF JURY VERDICT (AND OF OTHER MATTERS)

Endorsed on the Amended Trial Record of the Plaintiff
Endorsement made and dated June 5, 2014

June 5 / 2004 (*sic*)

In accordance with the verdict of the jury rendered today [and] filed as exhibit J3 there will be judgement for the [plaintiff] as follows:

1. The [defendant] is ordered to pay to the plaintiff for defamation general damages in the amount of $100,000.00.

2. The [defendant] is found to having acted with actual malice in publishing the defamatory words and is ordered to pay to the [plaintiff] aggravated damages in the amount of $250,000.00.

3. Judgement to bear pre-judgement [and] post-judgement in accordance with s. 128 & 129 of *Courts of Justice Act*.

4. Costs to be determined as to quantum [and] scale.

[next page]

June 5 / 2014

1. Bill of Costs to be submitted by [plaintiff] on or before June 25th 2014. [Defendant] to answer within 15 days of receipt [and] [plaintiff] may reply within 5 days thereafter.

2. Show cause hearing concerning contempt of [defendant] to be heard Sept 25 / 2014 at 10 AM.

[Signed Justice Michel Charbonneau]

Court File No. CV-11-516517

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

R E A S O N S F O R D E C I S I O N
(I N J U N C T I O N M O T I O N)

BEFORE THE HONOURABLE JUSTICE M. Z. CHARBONNEAU
on Friday, June 6, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden	Counsel for J. St. Lewis
A. Semenova	Counsel for J. St. Lewis
D. Rancourt	In person

(i)
Table of Contents

SUPERIOR COURT OF JUSTICE
T A B L E O F C O N T E N T S

Transcript Ordered:	June 6, 2014
Transcript Completed:	August 18, 2014
Transcript approved by Charbonneau J.	August 28, 2014
Ordering Party Notified:	August 29, 2014

LEGEND

[*sic*] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

FRIDAY, JUNE 6TH, 2014

R E A S O N S F O R D E C I S I O N

CHARBONNEAU J. (orally):

In this action, the plaintiff claimed damages against the defendant for libel. The jury yesterday returned a verdict against the defendant. The jury found that the defendant had defamed the plaintiff, that he was actuated by malice when he did so, and awarded general damages of $100,000 and aggravated damages of $250,000 for a total award of $350,000. In her statement of claim the plaintiff had also claimed the following relief. Paragraph 1(d), and I quote:

> An interlocutory injunction and a permanent injunction to restrain the defendant from any further publication of the defamatory statements complained of in this statement of claim;
>
> 1(e) An order requiring the defendant to permanently remove or take down the defamatory statements complained of in this statement of claim from any electronic database where they are accessible;
>
> 1(f) An order requiring the defendant to assist the plaintiff in obtaining the removal or take-down of the defamatory statements complained of in the statement of claim from internet search engines' caches such as

Google and any electronic database where the defamatory statements are accessible, and other internet websites operated by third parties.

The evidence heard at trial clearly establishes that the defendant has carried out a persistent attack on the plaintiff, and that the theme of his attack is that the plaintiff lacks integrity and independence as a professional. He has done so in unequivocal terms, calling her the "house negro" of Allan Rock, the president of the University of Ottawa. His attacks on Professor St. Lewis are part of a more generalized attack on President Rock and the University of Ottawa. This feud has been ongoing for years.

In the context of this feud with the university, he has repeated his claim that the plaintiff was the "house negro" of Mr. Rock and that she participated in a major cover-up to hide the fact that the academic fraud adjudication process was subject to systemic racism. The evidence is clear that his attack on Professor St. Lewis was systemically prepared and orchestrated with the help of Ms. Gervais, the person from the Student Appeal Centre who had published a report raising the allegation of systemic racism.

The defendant first started questioning the integrity of Professor St. Lewis in December, 2008, shortly after she delivered her evaluation

of the SAC report alleging that the academic fraud process was subject to systemic racism. The defendant was already closely involved with Ms. Gervais, the author of the SAC report and in fact helped her write her response to the plaintiff's evaluation.

From December, 2008, on a persistent and repeated basis, the defendant pursued his defamation of plaintiff on his online blogs, "U. of O. Watch" and "Activist Teacher". At the time of trial, there were still approximately 68 articles remaining online.

Although he was asked to remove the defamatory articles on many occasions, he refused to do so, and in fact continued posting new articles after the requests. He also linked many articles written by his activists supporters. It is clear to me he has no intention of stopping.

His attacks on Professor St. Lewis appear to be one of his weapons in his long-lasting and ongoing battle against the University of Ottawa, and its president, Allan Rock.

He has repeated time and time again the same allegations that Professor St. Lewis has covered up systemic racism at the university at the request of the President. He claimed that he had proof of this coverup as a result of emails that had been provided to him by Ms. Gervais. The

evidence clearly proves there was no such coverup and that Mr. Rancourt had recklessly or intentionally failed to draw attention to certain portions of these emails which showed otherwise. It is clear however that he never tried to find the truth about the existence or not of the coverup. He was reckless in this regard.

The defamatory attacks against Professor St. Lewis were particularly harmful because they were disseminated on the internet and they went to the heart of her professional reputation. The plaintiff acquired, through the years, an excellent reputation as a lawyer and as a law professor. She was recognized as a professional who had accomplished much to ensure protection of human rights. She has been severely hurt and affected by the defamation.

As the jury found, the defendant's published articles would be understood by a reasonable member of the public to mean that Professor St. Lewis has no integrity and no independence. It would also be understood – his reference to "house negro" – by members of the black community to mean she was a traitor and a pariah to her community.

Mr. Rancourt has pursued all possible avenues to try to delay these proceedings and in doing so he has been ordered, on different occasions, to pay costs to the plaintiff. He has failed to pay and

he confirms that he does not have the means to pay the costs award the or the damages award.

The defendant has shown a total disregard for the judicial process. Although he was told by the Court after a *voir dire* hearing that he could not advance his abuse of process defence, he tried nevertheless to plant the idea in the jury's mind during his opening statement. I had to stop him.

Mr. Rancourt is a very intelligent and highly educated man. Often he pleads innocence, or the fact that he is not a lawyer, to explain his so-called mistakes. He asks the Court questions, but it has become clear to me with time that he knows the answer, but simply wants something on the record from the Court which he hopes that he will be able to use in some matter later on.

The defendant has been actively involved in these proceedings and has been able to bring certain interlocutory issues up to the Supreme Court of Canada on two occasions. It is clear he is able to put together able legal arguments in his favour.

At the opening of the second day of trial, he read a prepared, written statement to the Court advising the Court he would not continue participating in the trial in view of the fact that he had now concluded he could not get a fair trial because I would not allow him to advance

his abuse of process defence. He walked out and only came back after the verdict to defend the claim for a permanent injunction.

During the trial however he had a number of his close activist associates attending trial and keeping him informed of the progress of the trial. He asked two of his witnesses to attend and ask to give evidence on his behalf. When I explained that Mr. Rancourt had to be present and lead his own evidence and that it could not be done in his absence, he wrote a letter to the newly-appointed Regional Senior Justice, James McNamara, requesting that Justice McNamara allow him to have his witness testify in his absence, because he said he had not withdrawn his defence but simply was absent in order not to be used as a prop by the Court.

One of the favourite tactics of the defendant - and I should say, this led to the first filing of the series of "R" exhibits which I will refer to, that was "R1" that I read in court and filed as "R1" - one of the favourite tactics of the defendant, from day one, was to try to have the judge assigned to his case recuse himself. He had been successful early on in the proceeding to have Justice Beaudoin remove himself from the proceeding, by raising the fact that a memorial trust had been established for his deceased son at the University by the law firm where his 42-year-old son was practicing at the time of his

untimely death. The defendant's tactic worked because Justice Beaudoin was deeply saddened and upset by that claim.

At the opening of trial, the defendant made a motion that I recuse myself on the grounds I had graduated from the University of Ottawa in 1974 and over the years made donations to my *alma mater* and at the time of my appointment to the bench in November, 1997, Justice Robert Smith was my law partner, and the fact the Justice Smith had been the case management judge for most of these proceedings. I dismissed this motion after hearing submissions in the absence of the jury.

From the time he walked out of the courtroom, the defendant published all types of comments in various forms on various blogs about what had occurred in the absence of the jury, and which he knew or should have known could prejudice the jury if it came to their attention. In some cases the publications were made by him on his blogs or sometimes indirectly by his activist friends.

On May 15, 2014, the afternoon after he walked out of the trial, he gave an interview to a reporter of the Ottawa Citizen telling him that I had withdrawn from the jury his key legal defence and that the trial was like a proceeding in the Soviet Union during the Stalinist era. That the Court had created a fake process where "I am

gagged" and he would not participate in that kind of "kangaroo court". The article was published in both the e-version and then the paper version of the Ottawa Citizen. In the paper edition on the first page of the City section, the defendant is quoted as saying that "the jury will not hear the whole story".

Cynthia McKinney, who was supposed to appear as an expert witness on the extended meaning of the words "house negro" for the plaintiff [*sic*], later published a petition on her blog, "change.org", entitled, "Give a fair court hearing to Denis Rancourt" in response to my ruling.

The timing of the petition, the minute details of the proceeding during those last few days in court, and the great similarity between the words used by Mr. Rancourt to explain the situation and the words of the petition lead me to the conclusion it was either written by him or for him with his input. The petition was also published on the blog of Mr. Rancourt's close associate, Mr. Hickey, by way of link.

The documents that are found in "R15" in relation to Ms. McKinney clearly indicates that she is well-known, that Mr. Rancourt knows her quite well, that she is a person he deals with, that, in fact, he indicates that she is one of his favourite important persons.

On May, 17 2014, Mr. Rancourt published on his blog, U. of O. Watch, an article entitled, "Why I walked out of the trial in which I am being sued." He includes word for word the written comment he had read in court, or written statement I should say, he had read in court, in the absence of the jury. It is noteworthy that he had written what he read in court. It raises suspicions that he intended all along to publish it. It was filed as "R5", that particular blog.

On May 22, 2014, the defendant published an article on his U. of O. Watch entitled, "Why did Regional Senior Justice Charles T. Hackland resign on May 8th, 2014?" He alleges in that article that Justice Hackland's resignation is related to the defamation case, *St. Lewis v. Rancourt*. He then explains in detail his unsuccessful recusal motion at the beginning of trial, his submissions at that hearing, and my decision. He also includes the fact that he had asked Regional Senior Justice Hackland to appoint a judge that was not a graduate of the University of Ottawa. He points out that on the very next day, Justice Hackland resigned.

He mentions that Justice Hackland, prior to his appointment, was a partner at Gowlings, the firm representing the plaintiff. It is noteworthy and has been known in the legal community that Justice Hackland advised those interested that he would be resigning in May 2014 in May 2013.

Finally, he incorporates the petition with a link to Cynthia McKinney's blog. The petition is now accompanied by numerous comments favourable to the defendant. You find that at "R7".

"R16" is an article on his blog, "Activist Teacher", May 25th, 2014. It's entitled, and I quote, "The crisis of access to justice in self-represented litigants". This article is obviously, again, an excuse to talk about his case and injustices he faces preventing him from getting a fair trial in this particular matter. This has continued on and on throughout the trial. See Exhibit "R18", "R19", "R20", "R21", "R22".

As a result thereof in a separate proceeding, I have cited Mr. Rancourt to appear on September 25, 2014 at 10:00 a.m. to show cause why he should not be found in contempt for having published, or caused to be published, prejudicial information about interlocutory proceedings and other trial proceedings that occurred during the absence of the jury while the jury was still in the process of hearing the case. This is the same information I'm putting him on notice that I refer to in those "R" exhibits.

The plaintiff relies on the conduct of the defendant throughout the proceedings outlined above in support of her position that the claim for a permanent injunction is justified on either

of the branches of set out by Justice Chapnik in the case of *Astley v. Verdun*, 2011 ONSC 3651.

Mr. Rancourt opposes the issuance of a permanent injunction on the following grounds.

One. Although there have been what he calls a "flurry" of decisions by the Superior Court at the trial level, the test enunciated by *Verdun* has never been the subject of approval by an appellate court. He submits that an injunction is a draconian remedy which should only be used in the rarest of cases. And he submits that the Supreme Court of Canada in *Grant v. Torstar Corp.*, [2009] 3 SCR 640, has confirmed that the proper remedy is damages and not an injunction.

Secondly, he then submits that the Court should not make an order preventing someone from saying something without knowing what that person will say in the future. He relies on the Quebec Court of Appeal decision in *Champagne v. Collège d'enseignement général et professionnel de Jonquière*, 1997 CanLII 10001 (QC CA).

Third, in this case it must be presumed, he argues, that the jury awarded $350,000 as full and final compensation, since they were never told that an injunction could follow. Therefore the award should be considered to be final remedy in this case.

Four. While he gave interviews to the media, these journalists are professionals who decide what they are to publish. Therefore what they publish cannot be considered to be defamatory. He gives the example of the occasion when the *National Post* used "house negro" in a title of one of the articles on the present lawsuit.

Five. He submits that the jury never was given the opportunity to consider the other articles. And therefore we cannot say that those were a continuation of defamation of the defendant, or a petition of those.

Six. He argues that putting a link to an article is not a repetition of a defamatory statement. He simply is reporting what is happening in court as a journalist would. And he may do so as a blogger, and he relies again on *Torstar* for that.

Seven. He submits that the comments on blogs he had to publish, or the comments of individuals which appear on his blogs, I should say, that he had to publish them because it was his policy to accept and publish all comments in a balanced fashion.

Eight. He submits that the plaintiff has not asked for an interim injunction, as was the case in *Verdun*. And therefore, not having asked for an interim injunction, the plaintiff cannot now seek a permanent injunction.

Also he tries to distinguish the *Verdun* case on the basis that there was a close relationship while here he's a pure stranger to the plaintiff.

Nine. He submits he may very well get money to pay if he gets his job back.

Ten. He indicates that as for the fact that he has not paid his costs – the costs ordered against him – that's not what the second part of the test in *Verdun* is about. It's only about the award of damages.

Finally, he submits the draft order submitted by the plaintiff would prevent him from blogging totally. He also indicates that the claims made in the statement of claim – the three paragraphs I've mentioned - do not cover some of the paragraphs contained in the draft order. He indicates that, at best – in paragraph 4 - if there is to be something to be removed, it should be only links, the links themselves, and not the articles.

He indicates that the word "assist" – I should have said paragraph 3 before, now in paragraph 4, the word "assist" is too vague and uncertain, that the Court should have more specific things that he would have to do.

He submits that paragraph 5 is also not in the statement of claim, and it's really a trial by

ambush as a result thereof and why should the work of the plaintiff be in any way facilitated?

As for the non-communication clause 6 he says that he did not communicate with the plaintiff, he has no intention of communicating with her and therefore there's no need.

I have already dealt with so-called new relevant evidence which Mr. Rancourt indicated to me by way of email that I should take into account. I've taken it into account and it does not change really anything that I heard yesterday. We have now filed this email in the latest "R" exhibits.

Now here's my analysis of all of this.

I reject the submissions of the defendant that when he published articles after he quit the trial, he was simply reporting what was going on during the trial as any other reporter would do.

The defendant is not a reporter in this particular case but the defendant in the defamation action that is proceeding. So it is his conduct that is relevant here in determining how one may anticipate he will act in the future.

Without waiting to see whether the jury would find whether his publications in question were defamatory, he repeats them again and again. There is no indication whatsoever that the damage

award will in any way change his mind. It is clear he still believes his statements were either not defamatory or even if they were, that he was totally entitled to publish them because defamation law is wrong and must be eradicated.

To protest the law by making submissions as to why a law should changed is one thing. To deliberately publish defamatory articles in the face of the existing law, before it is changed, because one disputes the law, is anarchy. That is clearly the state of mind of Mr. Rancourt.

Now in the case of *Grant v. Torstar*, the law has not been changed whatsoever. Yes, a blogger may publish comments on his blog in similar fashion as a journalist can, but both are subject to the same law of defamation. If the comment defames the person, then falsity and damages are presumed. It is up to the blogger or journalist to ensure that when he or she says something defamatory about someone, that that is true. If that is the case, then they need not worry about defamation law.

The case of *Champagne v. Collège d'enseignement général* has no application. It was a claim for an interim injunction. I won't say more about this case.

Although an injunction should only be given in the clearest of cases, my review of the totality

of the evidence clearly indicates this is such a case. It is the only remedy that will provide a genuine remedy to the plaintiff. I am satisfied that the test set out by Justice Chapnik in *Astley* is a valid and reasonable one and I adopt it.

In any event, the Court of Appeal has clearly established that an injunction is within the jurisdiction of the Court in a proper case.

I am satisfied that the plaintiff has demonstrated that the first branch of this test applies. The conduct of the defendant through the last three and a half years makes it more than probable that he will continue to publish further defamatory comments about the plaintiff.

His submissions themselves show he is in a fighting mood. He submits, for example, that simply linking a defamatory article about the plaintiff would not be defaming her. He submits that the plaintiff has yet to prove, in any event, that any of the other articles – that is, the articles which were not the specific subject of the jury's decision - were defamatory. He suggests the plaintiff has to prove that they were.

Moreover, the defendant has failed to publish a retraction nor offered at any time to do so. He is clearly not apologetic, even today.

I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay.

Moreover, his suggestion that the plaintiff could always bring an action that the transfer of his house to his wife was a fraudulent conveyance indicates he would be prepared to take all the means possible not to pay if he had eventually the financial means to do so.

The draft order submitted by the plaintiff is reasonable. It only forbids the defendant from publishing defamatory statements, not about stopping to blog whatsoever. It is not, as claimed by the defendant, a silencing of him. He can easily avoid breaching the injunction by simply refraining from publishing defamatory statements.

The defendant clearly would like to be able to force the plaintiff to have to start over from scratch every time he would publish a defamatory statement about her. This, again, indicates his state of mind.

It is important to remember that the jury found that the defendant was actuated by malice. I take this into consideration also.

The provisions of paragraph 5 are very reasonable and needed to protect the plaintiff. This is particularly so in view of the clear evidence that the defendant has the assistance and complicity of many other activists who would likely continue to defame the plaintiff. Paragraph 4 is only reasonable and it requires simply that the defendant provide reasonable assistance to the plaintiff in case the defendant's consent is required to remove something to remove something in reference to an engine. It may be that this, as I will indicate, may be slightly modified but essentially it is reasonable.

The suggestion of Mr. Dearden in relation to a modification of paragraph 3 is reasonable, that is the link, and I'll come back that.

So, for all these reasons I will grant the permanent injunction and I will sign the draft order subject to the following changes.

****

Now what are the changes you propose for paragraph 3 again, so that I get them right?

MR. DEARDEN: So on the third line, Your Honour, you would delete "or that contain, a)" – so paragraph 3, third line, you would delete the words....

THE COURT: "Or...."
MR. DEARDEN: "Or that contain, a)".
THE COURT: So "or hyperlink to Exhibits 3 and 4"?
MR. DEARDEN: No, it would read, "as found to be defamatory and to remove all hyperlinks to exhibits 3 and 4 in any articles he has published".
THE COURT: Okay, I'm sorry, you'll have to say that again.
MR. DEARDEN: Yeah, I'll give that to you again. So, "the jury has found to be defamatory". The new words are, "and to remove all"....
THE COURT: All right.
MR. DEARDEN: And then add an "s" to "hyperlink", so "remove all hyperlinks...
THE COURT: Okay.
MR. DEARDEN: ...to Exhibits 3 and 4", and add the new words "in any articles he has published".
THE COURT: So it would read "the statements that the jury has found to be defamatory and to remove all links to Exhibit 3 and 4 in...
MR. DEARDEN: "Any articles."
THE COURT: ...any articles he has published."
MR. DEARDEN: Period.
THE COURT: So I cross out "or that contain".
MR. DEARDEN: "Or that contain a".
THE COURT: Okay.
MR. RANCOURT: And – the word is "hyperlinks", not just "links".
THE COURT: Yes, that's right, thank you. And 4(4), I am modifying as follows. It will say,

"in order to provide reasonable assistance to the plaintiff in obtaining the removal or take-down etcetera." To provide reasonable assistance to the plaintiff. Okay.

****

MR. RANCOURT: Pardon me. What changed, finally?
THE COURT: It's "provide reasonable assistance." So it's related to something that may be removed by Google. So reasonable – for sure, if they ask you, I don't know, to pay $300 to do that, it's not that. It's simply something to do like sign a consent or say to Google you are in agreement. So it's reasonable. If the Court decides that it's not reasonable, like if we find that we are asking you to do something out of the ordinary, then it's not reasonable.
MR. RANCOURT: So if I understand correctly, let's say Google asks me permission it would be reasonable for me to give them the permission, that's what you mean?
THE COURT: Yes.
MR. RANCOURT: Thank you.
THE COURT: All right. That's it.
MR. DEARDEN: Thank you, Your Honour.
THE COURT: I can send it now with these changes, but it will be preferable probably if you get one to me shortly in my office upstairs. If somebody goes at the reception I'll sign it and give it back right away.
MR. DEARDEN: I'll do that, Your Honour.

MR. RANCOURT: I have another point, a procedural point, that's important, Your Honour. You didn't find that I'm not a party, so I would ask that Mr. Dearden deal with me like I am a party because there's a lot of practical things that need to be done with an appeal. For example the order that you'll sign – he'll have it. Normally it's his duty to give me a copy. There's all sorts of things like that that a party has a right to expect from another party and I would like that procedure to be followed. Because it was not decided that I'm not a party. Because it would be practical to behave that was or to conduct oneself that way. I find that it's not reasonable that he act as if I'm a member of the public.

THE COURT: Regarding the procedure for injunction, you can't be one or the other. It's obvious that he has to give you a copy of the order and these things. You have participated. But I have nothing else to add regarding your point.

COURT SERVICES OFFICER: Order, please. All rise.

THE COURT: Hold on here. I will endorse the trial record for the injunction. We are June 6. For oral reasons given in open court, permanent injunction to issue as per modified draft order.

CLERK REGISTRAR: Court is adjourned.

ORIGINAL SIGNED BY

THE HONOURABLE JUSTICE MR. MICHEL Z. CHARBONNEAU

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, subsection 5(2)

I, John A. Curry, certify that this document is a true and accurate transcription of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario, taken from Digital Recordings:

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and

0411_CR36_20140606_115815__all-chs__sel_11-58-19_to_12-38-14.dcr

which have been certified in Form 1.

August 29, 2014
_____
Date

_____
John A. Curry

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

COURT FILE NO.: 11-51657
DATE: 2014/08/21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **Joanne St. Lewis, Plaintiff**

AND

Denis Rancourt, Defendant

BEFORE: The Honourable Justice M.Z. Charbonneau

COUNSEL: Richard G. Dearden for Joanne St. Lewis

Denis Rancourt, Self-represented

HEARD: Written Submissions

ENDORSEMENT ON COSTS

[1] I have now had the occasion of reviewing the submissions of both parties on the issue of costs. They consist of the following documents:

a) Cost submissions of the plaintiffs filed on June 25, 2014
b) Response submission of the defendant filed July 4, 2014
c) Reply of the plaintiff filed on August 1, 2014

[2] When the defendant delivered his response he included an affidavit affirmed on July 3, 2014. The affidavit was filed in support of his submission that he is impecunious.

[3] Plaintiff's counsel proceeded to cross-examine the defendant on his affidavit on July 15, 2014. He filed with his reply submissions the transcript of the cross-examination and a book of exhibits referred to during the cross-examination.

[4] On receipt of the plaintiff's reply submissions, the defendant sought leave to file what he called a " sur reply" to the plaintiff's reply.

[5] I decided to review all material before deciding whether a "sur reply" should be allowed. For the reasons set below, I have decided that a sur-reply is neither warranted nor necessary to fairly and properly decide the issue of costs.

The nature of the proceedings

[6] The plaintiff brought a defamation action against the defendant. She sought general, aggravated and punitive damages. She also sought an injunction requiring the defendant to take down the defamatory words published by the defendant in his blogs and requiring him to cease and desist from repeating the defamatory words in the future.

[7] This was a jury trial. The trial lasted 15 days.

[8] After deliberating for approximately 1.5 day, the jury awarded the plaintiff damages of $350,000 which included general damages of $100,000 and aggravated damages of $250,000. The jury found that the defendant acted maliciously. In relation to the defendant's assertion that the plaintiff had acted as "Allan Rock's house negro", the jury found that those words would be understood by members of black Canadian community that she was a traitor and a pariah to the black community.

[9] I then proceeded to hear submissions on the claim for injunctive relief. I granted all the relief sought by the plaintiff.

[10] As part of the preliminary motions, I heard a motion by the defendant that I recuse myself. I dismissed his motion and gave oral reasons for that decision.

[11] I also heard a motion to determine whether the defence of "claim by proxy" would be left with the jury. That defence headed "Government entity and third party involvement Charter" was set out in paragraphs 61 to 67 of the statement of defense. The defendant alleged that the action should be dismissed because it was improperly funded by government funds, was inconsistent with the defendant's right to free speech under section 2 (b) of the Canadian Charter

of Rights and Freedoms. He submitted the action prevented a proper balance on individuals' protection against defamation and free speech criticism provided by the Charter and was intended to silence the defendant regarding matters of public interest and as such was an abuse of process.

[12] I ruled that this defence could not be left with the jury. The main reason for my decision was that the defendant had raised the same issues in a preliminary champerty motion that had been dismissed by this court. An appeal from that dismissal had been dismissed by the Court of Appeal. The Supreme Court of Canada had refused the defendant's motion for leave to appeal.

[13] In his opening address to the jury, the defendant started telling the jury that he would be asking them to dismiss the action on the basis of abuse of process. I interrupted him and after the jury was excused, I reminded him of my ruling concerning his abuse of process defence and told him that he could not raise it with the jury.

[14] On the morning of the 5th day of trial, before the jury was called into the courtroom, the defendant read a prepared statement to the effect that he could not get a fair hearing before me and therefore he would not participate any further in the trial. He left the courtroom. He only returned to hear the jury verdict. At his request, and over the objection of plaintiff's counsel, I allowed him to participate in the injunction phase of the trial.

[15] I also note that after the defendant decided not to participate in the trial, several of his witnesses appeared before the court to ask to give evidence on behalf of the defendant. I dismissed their request explaining that they could not testify in view of the defendant's decision to voluntarily end all participation in the proceedings.

[16] The defendant sent a letter to RSJ MacNammara asking him to see that his witnesses be allowed to testify. I read that letter in open court and filed it as exhibit R-1. I explained once again that the defence witnesses could not be heard in the absence of the defendant. At one point one of those witnesses asked that I reconsider my decision. The witnesses remained in the courtroom throughout the trial.

[17] Subsequently, Mr. Rancourt on almost a daily basis published or caused to publish statements which outlined the various decisions made in the absence of the jury. He essentially proceeded to plead his case in the media and on-line. He explained why he was not getting a fair trial and had left the courtroom. I am of the view that those regular publications during the trial were creating a substantial risk of prejudice to the plaintiff's case were they to come to the attention of the jury. There was also a real risk of a mistrial as a result of the defendant's conduct.

[18] During the submissions on the injunction phase of the trial, the plaintiff's counsel moved that the defendant be found in contempt. I have fixed September 25th, 2014 for the contempt hearing. I will have more to say about the contempt proceedings later.

The plaintiff's position

[19] The plaintiff asks the court to award her costs on a substantial indemnity scale fixed in the amount of $552,706.56 for fees and $55,305.97 for disbursements plus the applicable 13% harmonized sales tax.

The defendant's position

[20] As part of his submissions on costs, the defendant moves that I recuse myself from determining the costs.

[21] He also moves that certain paragraphs of the plaintiff's costs outline be struck out as irrelevant and intended solely to be prejudicial.

[22] He submits that the trial was an exceptionally simple defamation case and success was divided.

[23] He submits that the amounts claimed are excessive for what was a simple unopposed trial.

[24] He submits that no costs be awarded to the plaintiff on the grounds that:

a) there is no reason to indemnify the plaintiff since the University is paying her legal fees;

b) an award of costs would be contrary to the Charter principle of freedom of expression;

c) an award would prevent the defendant from having access to an appeal.

ANALYSIS

The Recusal Motion

[25] This issue has already been determined. The defendant has raised it as one of his grounds of appeal to the Court of Appeal. The Court of Appeal will decide the issue at the relevant time. There is therefore no validity in raising this issue again at this stage.

The motion to strike certain paragraphs of the plaintiff's costs outline

[26] The submissions in a cost outline are simply that: "submissions". Mr. Rancourt seems to want the court to treat them as pleadings. He has forcefully submitted contrary submissions. The court considers all the submissions of both parties and determines which are persuasive and which are not. The submissions are an attempt to convince the court how the court should approach the issue of costs particularly in light of the factors set out in Rule 57. Any submission may or may not ultimately be accepted by the court. The submissions of the plaintiff are framed on that basis and are therefore relevant even if the defendant does not agree with them.

The guiding principles in awarding costs

[27] Section 131(1) of the Courts of Justice Act gives the court the discretion to determine by whom and to what extent costs shall be paid.

[28] Rule 57.01 sets forth the factors to be considered by the court in exercising its discretion.

[29] An award of costs has fundamentally two purposes. The primary purpose is to indemnify the successful party; secondarily, costs will also serve to deter wasteful and unreasonable conduct by litigants.

[30] The amounts of the cost award should be a fair and a reasonable amount that the unsuccessful party should pay, having regard to the factors in Rule 57.01 (3), see Boucher V. Public Accounts Council [2004], 71 O.R.(3d) 291 (C.A.).

RULE 57.01

[31] The rule emphasises that the court should first consider the result in the proceeding, any offer to settle, the principle of indemnity and the amount of costs that an unsuccessful party could reasonably expect to pay. The rule than provides that the court may consider a list of some 13 other factors.

a) The result of the Proceedings

[32] The defendant does not concede that the plaintiff was substantially successful at trial. Rather he submits that success was divided for the following reasons:

i) The plaintiff claimed general damages of $500,000, aggravated damages of $250,000 and punitive damages of $250,000 while the jury only awarded general damages of $100,000, aggravated damages of $250,000 and no punitive damages.
ii) Only 33 of the 55 defamatory meanings claimed were found to be capable of defamatory meaning.
iii) The jury only found 20 of the 33 remaining defamatory meaning defamatory.
iv) The plaintiff was not totally successful in the preliminary motions because the defence of litigation by proxy was not completely "struck out" and also the plaintiff was not allowed by the Court to simply put before the jury a list of all motions and appeals as evidence of malice but would have to rely on specific information of why any one of them was probative of malice.

v) Upon the defendant deciding to show up for the injunction phase of the trial, the court ordered plaintiff's counsel to provide the defendant with a copy of the plaintiff's factum submitted for the injunction phase of the trial.
vi) The defendant won access to language interpretation for the public with the help of the Citizen.

[33] I do not accept that any of the points raised by the defendant support a finding that success was divided. The defendant's submissions on this issue border on the irrational. The substantial success of the plaintiff is clearly demonstrated by the large amount of damages awarded, the finding by the jury that the defendant acted maliciously and the total injunctive relief being granted. His unreasonable position on the results of the proceedings illustrates his unreasonable practice throughout of disputing everything at each and every step of the way.

b) Offers to settle

[34] The record does not indicate any offer to settle.

c) The principle of indemnity

[35] The plaintiff was successful. I fail to see any legitimate reason why she should not be entitled to damages.

[36] The only question to be determined is whether she should be partially or substantially indemnified.

[37] The defendant submits the plaintiff should not be indemnified for the following reasons:

i) The plaintiff's actions needlessly lengthened the trial.
ii) The costs award would be contrary to the policy principles governing costs since the plaintiff has no need for indemnification.
iii) A court should not make an order that cannot be enforced. Here there is evidence the defendant is impecunious and will never be able to pay the award.
iv) The plaintiff would obtain double recovery as there is no evidence the plaintiff will remit any recovered costs to the University of Ottawa.
v) The awarding of costs would be unfair and go against the Charter principle of freedom of expression. The action was tantamount to the use of public funds by a government institution to silence criticism of the institution.

[38] I reject all the defendant's contentions.

[39] First of all, most of these submissions have already been addressed and rejected by the court when substantial costs awards were made against the defendant at every interlocutory step preceding the trial. There is no reason to come to a different conclusion now. The Court of Appeal and the Supreme Court of Canada also awarded costs against the defendant when dismissing the defendant's appeals. The outstanding costs orders now total over $250,000.

[40] Contrary to what the defendant alleges, it is the defendant who needlessly lengthened the trial by disputing every claim of the plaintiff and pleading a number of untenable defences and then abandoning them in the course of the trial. His submissions on costs are a continued illustration of his unreasonable tactics.

[41] The defendant's evidence that he is impecunious is self-serving at best. At his cross-examination he failed to answer most questions put to him preventing any meaningful analysis of his allegation that he has absolutely no asset to pay any portion of the costs award. The defendant's argument that there should be no costs because he is impecunious has been dismissed many times at the interlocutory stages of the proceedings. He insists on making the same argument again, thereby substantially increasing the plaintiff's legal fees and disbursements. The fact a party is impecunious is not a reason to deny costs to the successful party: see Myers V. Toronto (Metropolitan) Police Force [1995] OJ No. 1321(Ont Div Ct).

[42] This was not an action between the defendant and the University of Ottawa. The parties in this action are the plaintiff, an individual who had nothing to do with the ongoing dispute between the defendant and the University of Ottawa, and the defendant. The defendant chose to defame her in the most aggressive and malicious fashion. There is no Charter principle or other democratic legal rules in Canada which permit such severe attacks on a person's reputation and integrity. During oral submissions the defendant conceded that the University is not a government institution nor was the University implementing a government policy. The Charter has no application here: see Lobo V. Carlton University [2012] ONCA 498.

[43] The double recovery argument made by the defendant is unfounded. There is absolutely no reason in fact nor in law to support an inference that the plaintiff would not remit the costs award to the University.

[44] I find that the plaintiff is entitled to an award on the scale of substantial indemnity. It is justified on the basis of (1) the unreasonable conduct of the plaintiff throughout the proceedings which lengthened and forced the plaintiff to answer a multiplicity of frivolous arguments and wasted the court's time, (2) the unreasonable conduct of the defendant abandoning his defence and his witnesses in the course of the trial thus creating a number of unnecessary distractions during the remaining portion of the trial, (3) the defendant reprehensible conduct of repeatedly publishing comments to prove that the trial was unfair and the judge partial while knowing perfectly well that the jury could read those comments and this could seriously prejudice the trial process. His comments were put on the record as (R) exhibits. In them not only did he attack the trial process and the administration of justice, he also continued to publish defamatory comments about the plaintiff.

d) <u>The amount of costs the defendant could reasonably expect to pay</u>

[45] The defendant knew the plaintiff's counsel was a very experienced trial lawyer. The rates Mr. Dearden is claiming for himself and others are reasonable in the circumstances and the defendant knew what they would be. He already had been ordered to pay very substantial amounts of costs. In deciding to make this case overly complex and time consuming to defend, the defendant knew the ultimate claim for costs would be very substantial. He cannot complain now that it is very substantial.

[46] His decision to walk out during the trial itself may have decrease the number of days of trial. However, all the preparation had already been done. His continued on-line comments forced plaintiff's counsel to spend additional time monitoring them and making submissions to the court. The defendant who had individuals monitoring the trial full time had to know the unnecessary disruptions his letters and on-line publications were creating.

The Contempt Hearing

[47] At one point I was asked by one of the defendant's close colleagues whether he could publish certain statements made in court in the absence of the jury. I told him that it was unlawful to publish anything said in the absence of the jury. Although this is the law in criminal proceedings it would appear this is not necessarily the case in civil proceedings.

[48] As indicated earlier, when submissions were made during the injunction phase of the trial, Mr. Dearden asked that Mr. Rancourt be held in contempt for his on-line comments during the course of the jury trial. I fixed September 25th 2014 to hold a contempt hearing for Mr. Rancourt to show cause why he should not be found in contempt.

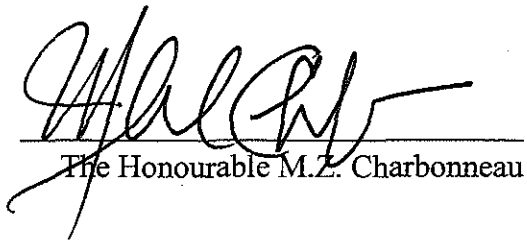
[49] I am of the opinion upon further review of the law that a formal order prohibiting the defendant from publishing his comments during the course may be necessary for a finding of contempt. No formal prohibition order was sought by the plaintiff and none was made.

[50] I am therefore cancelling the contempt hearing set for September 25th, 2014. If the plaintiff disagrees with my tentative view, the plaintiff may, within 20 days, bring a motion for contempt at a convenient date to be set by the trial coordinator after discussion with both parties. This will provide a procedural framework for the hearing which is not available at this time.

[51] **Quantum of Costs**

For all of the above reasons, I find the plaintiff is entitled to be substantially indemnified. I find that none of the time spent on the interlocutory motions, where costs have already been attributed, is included in the plaintiff's costs outline. I find the overall claim somewhat excessive. In keeping with the rules and principles noted above and in particular all the factors

set out in Rule 57(1), I find a fair and reasonable award in all the circumstances to be $444,895.00 including disbursements and taxes.



The Honourable M.Z. Charbonneau

Date: August 21, 2014

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Joanne St. Lewis, Plaintiff

AND

Denis Rancourt, Defendant

BEFORE: The Honourable Justice M.Z. Charbonneau

COUNSEL: Richard G. Dearden for Joanne St. Lewis

Denis Rancourt, Self-represented

ENDORSEMENT

M.Z. Charbonneau, Judge

Released: August 21, 2014

Dossier No. CV-11-51657

COUR SUPÉRIEURE DE JUSTICE

E N T R E :

JOANNE ST. LEWIS

Plaignante

et

DENIS RANCOURT

Défendant

M O T I O N

DEVANT LE JUGE M. Z. CHARBONNEAU
Le 7 mai 2014, à OTTAWA (Ontario)

COMPARUTIONS:

M^e R. Dearden — Avocat de la plaignante

D. Rancourt — En personne

COUR SUPERIEUR DE JUSTICE

T A B L E D E S M A T I È R E S

****

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Transcription demandée le:	7 mai 2014
Transcription approuvée le:	2 juillet 2014
Transcription complétée le :	2 juillet 2014
Avis donné le:	3 juillet 2014

I just wanted to point out and put on the record that Mr. Rancourt's ineligibles actually are eligible and that case is quite different and - and I adopt...

M. RANCOURT: C'est dans l'oeil de celui qu'il dit.

MR. DEARDEN: Your Honour, I adopt all of my submissions that I have in my factum and put those on the record in the factum that I - I filed today. Thank you.

M O T I F S D E L A D E C I S I O N

CHARBONNEAU, J. (Oralement):

Je vais rejeter la motion de monsieur Rancourt qui demande que je me récuse. Monsieur Rancourt base sa demande sur trois faits qu'il dit appuyer sa position, qu'il a raison d'être inconfortable avec le fait que je ne serais pas impartial si j'entends cette cause.

Premièrement, le premier fait, c'est que je suis un diplômé de l'Université d'Ottawa. Il a bien raison de dire qu'en 1971 j'ai gradué avec un degré en histoire de l'Université d'Ottawa et en 1974, j'ai obtenu mon degré en droit de la faculté de *Common Law* d'Université d'Ottawa.

Il a aussi bien raison de dire que j'ai été un associé à Robert Smith, qui est aujourd'hui le juge Smith de 1983 jusqu'à 1997, quand j'ai été nommé juge à cette cour.

Troisièmement, dont ce troisième fait - en fait, il y a un quatrième là. Troisième fait qui est personnel à moi, c'est que j'ai, à travers le temps, remis des argents à l'Université d'Ottawa comme dons périodiquement à l'Université d'Ottawa, plus particulièrement la faculté de *Common Law*.

La quatrième chose qui n'est pas directement personnelle mais c'est le fait que le juge Smith a dans les dernières années, a eu la gestion de cette cause et qu'il a fait un certain nombre de décisions pour amener à bien ultimement le procès qui doit commencer lundi prochain.

La question, là, centrale ici c'est, est-ce que ces faits-là connus et pleinement appréciés par une personne objective, bienpensante, connaissant de tous les détails ici pourrait de façon raisonnable l'amener à penser que le juge ne serait pas impartial, que je ne serais pas impartial dans cette cause ici, tout en examinant la chose de façon pratique, réaliste et après avoir considéré la question de façon consciencieuse, puis pleinement objective.

Le fait d'avoir été diplômé de l'Université d'Ottawa dans les années '70, je ne vois pas comment une personne objective - le personne que j'ai décrite pourrait avoir un doute - même un doute sur mon impartialité à entendre une cause, la cause présente.

Le fait que j'ai fait des dons, les anciens gradués d'Université font des dons régulièrement à leur *alma mater*. Une personne raisonnable regardant ça ne penserait pas que ceci pourrait amener l'impartialité basé sur le test que je viens de mentionner.

La même chose concernant le fait que j'ai été associé, partenaire d'affaire avec le juge Smith jusqu'en 1997, au moment de ma nomination. Le juge Smith a fait son travail. Ça fait très longtemps que j'ai été associé avec lui. Je ne suis pas au courant de ses décisions autre que ce que j'en entendrais bien peut-être parler si ça devient pertinent. Mais encore là, c'était des décisions sur des matières interlocutoires ou peut-être sur des questions de procédure pour pouvoir mieux acheminer le procès.

Et donc, je ne vois pas non plus comment même en les mettant tout ensemble ces choses-là, vraiment une personne bienpensante, réaliste, pratique, objective en viendrait à la conclusion qu'il -il ya peut-être une probabilité que j'aborde ce procès de façon partiale.

Il ne faut pas oublier non plus que c'est un procès avec jury. Je n'aurais pas à décider des questions de faits ici. J'aurais à décider certainement de toutes les questions d'admissibilité, des questions de droit et

j'aurais à donner des instructions en droit au jury. Toutes ces questions sont des questions qui sont tout à fait du ressort d'un appel et la Cour d'appel peut les revoir, les questions de droit, les questions de décision sur l'admissibilité et ainsi de suite.

La décision du juge McNamara, je dois dire, pour commencé que j'ai très peu d'information sur cette cause. Il emploie le mot 'unique', des circonstances uniques. Je ne sais pas vraiment ce qu'étaient les circonstances uniques. Je dois dire que si j'avais entendu cette cause et si - que si la décision du juge McNamara c'était qu'il devait se retirer du simple fait qu'il avait gradué de l'Université d'Ottawa, je ne serais pas d'accord avec lui. Ce simple fait ne pourrait certainement pas donner matière à une appréhension raisonnable par une personne bien pensante. Je ne suis naturellement pas lié par cette décision, mais je peux voir par l'usage du mot « unique » et ainsi de suite que ce n'est pas le - sans doute les mêmes faits, donc c'est tout ce que je peux dire à propos de cette décision. Ici, la cause est entre deux individus.

Il est évident qu'il y a à l'arrière-plan des allégations de la part de monsieur Rancourt que l'Université est impliquée au moins indirectement, sinon directement. Il y a eu des décisions dans le passé relativement à ça dans un - si je comprends bien ce qu'on réfère dans le

factum de la demanderesse, des références à des décisions. Ils ont été faits relativement à une motion par monsieur Rancourt et tout se serait rendu à la Cour d'appel. Il est à noter que la Cour d'appel a brièvement adressé la question de la soi-disant partialité du juge Beaudoin parce que ça avait été soulevé par monsieur Rancourt et la Cour d'appel dit que le juge Annis avait raison de dire que le juge Beaudoin n'était pas partial du simple fait que son fils avait été un avocat dans le bureau pour - qu'il travaillait pour l'Université d'Ottawa et qu'aussi il avait - cette firme avait mis de côté un fond quelconque à la mémoire de son fils décédé.

La question qui est soulevée relativement à des allégations que l'Université d'Ottawa, ce qu'on a appelé là cette *lawsuit by proxy,* il semblerait que c'est quelque chose qui est soulevé par monsieur Rancourt dans cette plaidoirie et que, à un moment donné, il serait question de déterminer la pertinence de tout cela, mais pour les fins de cette demande en récusation, ce n'est pas vraiment pertinent à ma décision. L'action demeure une action entre madame St-Lewis et monsieur Rancourt pour libelles diffamatoires.

L'Université, on allègue, peut peut-être avoir certains intérêts. Je ne sais pas. Mais même si l'université était liée, l'institution elle-même était liée à cette action, est-ce qu'une personne raisonnable penserait qu'un juge qui a gradué au

début des années '70 de l'université et comme ancien étudiant contribue, tente d'aider la faculté de droit en donnant des dons, ce que tout le monde fait, ce que beaucoup beaucoup d'anciens font, naturellement, pour soutenir, continuer les vocations de la section de Common Law, est-ce quelqu'un de raisonnable pourrait penser que le juge qui a gradué de cette université pour ce simple fait deviendrait ou qu'il aurait une appréhension raisonnable et objective de l'impartialité ou de manque d'impartialité.

Donc si, même si j'avais à décider - si c'était purement une action contre l'université, je ne vois pas - faudrait qu'il y aille des faits pas mal plus - qui lieraient vraiment plus le juge à l'université au moment où tout se passe. Mais dans ces faits-ci, je ne le vois pas du tout. Je ne peux pas - ça serait de me - ça serait, en fait, pour un juge de se désister purement sur ces considérations-là, ça serait vraiment pas remplir son devoir ici de voir à ce que la cause procède et ça serait trop facile de - ça serait de vraiment - et ça serait manquer en ce devoir de juge, si c'était seulement le fait qu'il est gradué et qu'il a contribué des dons à l'université.

Dernier point qui est soulevé c'est que maître Dearden a enfreint la règle 1.09 en faisant parvenir une lettre à mon cabinet, à mes *chambers* sans demander la permission au préalable à

monsieur Rancourt. Dans toute règle de procédure, il faut regarder quel est l'esprit de la règle. On ne veut absolument pas qu'une partie, alors qu'il y a un procès qui est en cours, qu'une partie seule communique avec un juge pour discuter de la cause. C'est ça qui est l'esprit de la règle. Maintenant, le fait que quelqu'un attire l'attention au juge et fait une demande pour que - et ce qu'il serait approprié de faire une conférence de quelque sorte en préparation du procès ou pour faciliter certaine chose dans la procédure et ainsi de suite et qu'il en fasse part par copie à la partie adverse, ça se fait régulièrement. Ça n'attaque pas l'esprit de la règle. S'il y a quoi que ce soit, si c'était une lettre qui disait, je veux discuter de la cause et que le juge dit, « Oui, venez discuter de la cause » sans que - il y a pas question que là, ça serait un enfreindre la règle. Mais lorsque, avec avis à l'autre côté, on dit ça serait peut-être une bonne chose qu'on aille une rencontre tous les deux parties et le juge pour pouvoir discuter de procédure, discuter de comment on va procéder la semaine prochaine avec le jury et ainsi de suite. Comme j'ai dit, moi je ne connaissais rien à propos de cette cause. Je remercie vraiment, Monsieur Dearden, d'avoir pensé de communiquer avec moi de façon à ce que maintenant j'ai les deux parties qui m'ont adressé plusieurs points à être discutés et vraiment ç'aurait été simplement un charivari incroyable si on avait été ici lundi matin avec

un tableau d'au-dessus 100 personnes pour choisir un jury sans qu'on aille au moins retracé les grandes lignes de certaines questions et il semblerait qu'il y en a plusieurs questions de façon à ce qu'on puisse procéder de façon ordonnée, efficace.

Pour tous ces motifs, donc, la motion de monsieur Rancourt est rejetée.

(Copie originale signée)

L'Honorable Juge Charbonneau

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LE TRIBUNAL: Donc, now we should fix a time....
MR. DEARDEN: Your Honour,...
THE COURT: Yeah?
MR. DEARDEN: ...could I, for the - add to the record the May 2nd, 2014 letter that I did write you, so that the record is complete. I - I only have one and I - I marked it, but I want the letter in the - in the record along with Mr. Rancourt's material, please.
M. RANCOURT: Cette - cette lettre est déjà attachée à ma lettre que je vous ai déjà donnée.
MR. DEARDEN: Oh, is it?
M. RANCOURT: Oui.
MR. DEARDEN: It's in the....

FORMULAIRE 2

CERTIFICAT DE TRANSCRIPTION (PARAGRAPHE 5(2))

Loi sur la preuve

Je soussignée, Melanie Lauzon, certifie que le présent Document est une transcription exacte et fidèle de l'enregistrement de St. Lewis c. Rancourt portée devant la Cour Supérieure de l'Ontario au 161 Elgin Street, Ottawa, Ontario tirée de l'enregistrement No. 0411_CR21_20140507_091613__10_CHARBOMI.dcr, qui a été certifié dans le Formulaire 1.

Aug. 8, 2014
Date

Melanie Lauzon

PHOTOCOPIES DE LA TRANSCRIPTION sont pas certifiés et pas autorisée à moins APPOSER portant la signature originale de Melanie Lauzon
Règlement de l'Ontario 158/03 - Loi sur la preuve

*La présente certification ne s'applique pas aux motifs de la décision qui fait l'objet d'une révision par un juge.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 14, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

W I T N E S S E S

E X H I B I T S

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[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.

Transcript Ordered: .....June 28, 2014

Transcript Completed: .....December 30, 2014

Ordering Party Notified: .....December 30, 2014

WEDNESDAY, MAY 14, 2014

LE TRIBUNAL : Bonjour.

THE COURT: Good morning.

INTERPRÈTE : Bonjour.

DENIS RANCOURT : Bonjour, Monsieur le juge.

INTERPRETER: Hello, Your Honour.

THE COURT: All right, so I'm ready to give my decisions in both matters that we argued Monday and Tuesday. All right. First of all – and I've prepared some reasons. I think it's important – just trying to maybe postpone giving full reasons but I think even though – could give more extensive reasons, I think it's clear enough and I think it's important, for the purpose of the parties, knowing where we're going to have some reason at this time, and not only a bare decision or order and I don't want to postpone this, obviously.

R E A S O N S F O R R U L I N G

CHARBONNEAU, J. (Orally):

So, I've come to the conclusion that Mr. Rancourt may not advance before the jury the defence of claim by proxy, pleaded in paragraphs 61 to 67 of the Statement of Defence for the following reasons. In order to succeed, the defendant will have to prove, on a balance of probabilities, the following: a), that the action brought by Joanne St. Lewis is, in fact, an action by the University of Ottawa, financed by government or

public funds; b), that the use of government or public funds by the university was by a government entity in order to pay the proxy's legal fees to enable the proxy, who was also an employee of the government entity, to bring an action of defamation against a citizen with the purpose of inhibiting the justified criticism of the government's entity and that as such, it is inconsistent with section 2B of the *Canadian Charter of Rights and Freedom*; c), the law grants an absolute privilege to a citizen against a civil action and defamation initiated against a citizen by this government, whether directly or by the use of a proxy; d), in this action, the university is providing improper or interested financial support for the plaintiff and this has the effect of creating an imbalance between the legal concepts of protection against defamation, vis-à-vis *Charter* or protected right of free speech; and e), the University of Ottawa brings this action by proxy to punish, intimidate or silence the defendant and is therefore a frivolous, vexatious action and an abuse of process. Now, I have carefully reviewed the reasons of Mr. Justice Smith and the reasons of the Court of Appeal in dismissing the appeal from Justice Smith's decision in the champerty application. I conclude that the defendant is estopped from attempting to prove most facts listed above, which would support his pleading, because they have already been decided against him by a final judicial decision in the champerty

motion. In that decision, Justice Smith found: one, the action is an action brought by the plaintiff to protect her reputation and not an action brought by the university or for any alleged ulterior motive. The university's decision to pay the plaintiff's legal fees was proper and justified in all the circumstances and it was not to silence the defendant.

The defendant submits that he did not have all the evidence, he now has available to him, when the matter was before Justice Smith. Moreover, he submits that he has more tools available to him now in this trial than what he had in the application before Justice Smith. He therefore submits that it would be unfair to prevent him from advancing this issue at this time. The defendant is missing the point, which is that issue estopped prevents a party from re-litigating the same issues, whether there is more evidence or better evidence at the second shot at the can in order to obtain a different result on issues that have already been finally decided. The facts have therefore already been decided that the decision to pay the legal fees was proper and the underlying purpose of this action is not to silence the defendant, but rather to protect the reputation of the plaintiff.

The defendant has available to him all the common law defences, and he has pleaded most of them, if not all of them, in his Statement of Defence. He

may, therefore, succeed in convincing the jury that one or more of the defences applies in this case. There is, therefore, no imbalance, as suggested by the defendant. The mere fact that one party may have a deeper pocket to finance a litigation is not, of itself, the creation of an imbalance, inconsistent with the principles of the *Charter*. That is not the law. I would like also to point out here that a lot of the defendant's submissions were premised on the basis that there was no damages to the plaintiff in this case and that therefore, special consideration or special rules should apply. Now, what we have here – it will be for the jury to decide whether there's damages but obviously, when we exam the pleadings and the allegations, there is certainly ample allegations for a jury to come up and make an award of substantial amount of damages. So, that - the basis that for some reason, the submission, based on the premise, where there's no damage, then the – well, damages are yet to be decided here and they will be decided on the evidence and one cannot come to that conclusion. I find this somewhat perplexing, the submission, because obviously, as I say, the allegations are sufficient that if the plaintiff proves these allegations, the jury may very well award substantial damages. So, as a result, all evidence, which is purported to be introduced for the purpose of proving that the payment of the legal fees was improper or that this action is being brought by the plaintiff as

a proxy for the university and that the university is doing so to silence or intimidate the defendant is inadmissible evidence. So, the parties may not, in any way, attempt to present such evidence and are not, in any way, to make any submissions to the same effect in their opening or closing addresses.

Now, turning to the summons, there's a motion brought by the university to quash a summons to witness with various witnesses. For the reason that I have just set out in my ruling in relation to the defence by proxy defence, I find that all the documents listed in Schedule C, set out in the motion record, are not relevant and, therefore, need not be produced. Insofar as the documents listed in Schedule B, I find they are protected by litigation privilege. On the evidence before me, I find they were all prepared after there was a reasonable apprehension of litigation and were prepared for the dominant purpose to assist in the apprehended litigation. I reject Mr. Rancourt's contention that the privilege has expired with the final determination of the champerty motion. The champerty motion, in this action, raised common issues. They are closely related proceedings. In fact, the champerty motion was an interlocutory proceeding in this action. I find that the privilege is still alive. The documents listed in Schedule B need not be produced and for sake of – to be complete, I agree with Mr.

Dearden that the – his invoices to the plaintiff are all – are covered also by solicitor and client privilege. All right. So, that takes care of those issues.

DENIS RANCOURT : Monsieur le juge, est-ce qu'il serait possible d'avoir une version écrite de, de ce que vous venez de dire? J'ai, j'ai pris des notes rapidement le plus possible, mais j'aimerais vraiment la précision de la langue.

INTERPRETER: Your Honour, can we get a written version of your reasons? I took notes as best I could but I would really like a written reason.

LE TRIBUNAL : Oui, bien, on peut – vous pouvez demander à la sténographe. Elle va vous donner une transcription de ce que je viens de lire, oui.

INTERPRETER: You can ask for a transcript. The stenographer will give you....

DENIS RANCOURT : Est-ce qu'elle peut faire ça rapidement parce que je sais que d'habitude, ça prend un mois ou plus pour obtenir ça – ce genre de chose.

INTERPRETER: Can she do that? Because normally, it takes a month or more. Can she do that quickly?

STÉNOGRAPHE JUDICIAIRE : C'est à cause que moi je suis ici pour le reste de la semaine. Si que c'est l'autre sténographe la semaine prochaine, je peux faire la semaine prochaine, mais je suis ici toute la semaine.

INTERPRETER: I am here for the rest of the week, so the – another stenographer would be here next

Certification

FORM 2

Certificate of Transcript

***Evidence Act*, Subsection 5(2)**

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at Ottawa, Ontario, taken from Recording(s) No. CR36_20140514_093101 which has been certified in Form 1, by R. Commodore.-

December 30, 2014

_____ _____

(Date) **(Signature of authorized person)**

Videoplus Transcription Services ACT number 554-265-0147

This certification does not apply to Reasons for Ruling, which were judicially edited.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

(i)
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SUPERIOR COURT OF JUSTICE

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Transcript Completed: ..... December 30, 2014
Ordering Party Notified: ..... December 30, 2014

CLERK REGISTRAR: Thank you, Your Honour.

THE COURT: All right. So, let's break for 10 minutes to try to set this up.

(10:14 a.m.)

R E C E S S

U P O N R E S U M I N G : (10:30 a.m.)

THE COURT: So, everybody's set now? All right. Now, before we bring the jury in, I had a number of rulings to make or answers to certain requests. One was a request by Mr. Rancourt for the daily release of the digital recordings and that's fine, I will order that the – that you may obtain those. The protocol is that you must attend and sign a undertaking, which sets out that you – it's a form that's already established but you may not use this for any other purpose than to prepare and to assist you in the trial. So, that's fine. Now, there was also an issue of what use can be made of the – any evidence of – concerning the interlocutory matters.

R E A S O N S F O R R U L I N G

CHARBONNEAU, J. (Orally):

So, my ruling is that the plaintiff may introduce into evidence specific written or oral statements made by the defendant in the course of the interlocutory proceedings, which were made naturally since the publication of the alleged libel in order to

offer this to the jury's consideration as evidence of malicious conduct of the defendant. The statements may have been made orally in court or elsewhere or in writing, in pleadings, affidavits or factum. Naturally, the defendant will be entitled to provide evidence why the statements introduced were made by the defendant and the context of those statements at that time, for that they should not be interpreted in any other way than what he suggest they should be interpreted and that therefore, they were not malicious.

Now, the plaintiff, however, may not introduce in evidence globally, the list of interlocutory motions that were brought either at interlocutory motions or appeals that were brought to other courts nor argue in a global matter that the interlocutory proceedings by themselves, the number of interlocutory proceedings in themselves indicate malice. To do so, I rule would risk opening collateral issues, which will only serve to delay the trial and confuse the jury.

All right. So, those are the two rulings, one and two. So, we will have – you will have to remove naturally as we had discussed, if it is there, your list of interlocutory proceedings.

FORM 2

Certificate of Transcript

***Evidence Act*, Subsection 5(2)**

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at, 161 Elgin Street, Ottawa, Ontario taken from Recording(s) No. 0411_CR36_20140515_093919 which has been certified in Form 1, by Renee Commodore.

_____ _____

(Date) **(Signature of authorized person)**

Videoplus Transcription Services ACT number 5542650147

This certification does not apply to Reasons for Ruling, which were judicially edited.

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 3209

COURT FILE NO.: 11-51657
DATE: 2014/05/27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis, Plaintiff

AND

Denis Rancourt, Defendant

BEFORE: Justice M. Z. Charbonneau

COUNSEL: Richard G. Dearden and Anastasia Semenova for the Plaintiff

Denis Rancourt choosing not to participate at trial

HEARD: In writing

ENDORSEMENT

[1] I must decide whether, as a matter of law, the words used in the 8 stings highlighted in exhibits 3 and 4 are reasonably capable of being defamatory.

[2] I must decide whether the challenged words are capable of bearing the defamatory meanings set forth by the plaintiff in her statement of claim. In deciding this threshold issue, I must be guided by the following well established legal principles:

- At this stage I am only deciding *prima facie* defamation
- In WIC Radio LTD v. Simpson ,2008 SCC 40 at paras 67-68, the Supreme Court of Canada adopted the following definition of a defamatory statement from the BC Court of Appeal decision in Vander Zalm v. Times Publishers "a defamatory statement is one which has the tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or dis-esteem." As a result the test to be applied is a relatively low one.
- The trial judge is to apply a standard of common sense construction, an objective test, and the words will be construed as they are generally understood in their natural and ordinary sense.

- "It is not necessary to prove that the words would be understood in a defamatory sense by everyone who hears or reach them, as long as the question of whether a reasonable person to whom they were published would understand them in a defamatory sense is answered in the affirmative": Lawson v. Baines 2012 BCCA 117 at paragraph 27.
- The meaning of the words may be determined from the ordinary meaning of the words or from the surrounding circumstances, as they would be understood by the ordinary, reasonable and fair-minded reader: Boteuk v. Toronto Free Press [1995] 3 SCR 3 at para 62.
- In this case the plaintiff has alleged several meanings for each sting. I must decide whether the words are capable of bearing each of the defamatory meanings. However, I am not to select a meaning that is the harshest or most extreme.

[3] The plaintiff has set out all the meanings she alleges flow from each sting in a draft book of questions. Those are found at tab A of the book of questions which has been filed on this Voir Dire.

[4] Applying the above legal principles and keeping in mind that I must not select the meaning which is the harshest and most extreme I conclude that the words for each of the specified sting are capable of bearing all of the following natural and ordinary meanings and are reasonably capable of defaming the plaintiff.

[5] In relation to Sting number 1: "did professor St. Lewis act as Allan Rock's House Negro", is capable of the following meanings:

a. Professor St. Lewis lacks integrity
b. Professor St. Lewis was biased in the conduct and offering over an evaluation of the SAC report
c. Professor St. Lewis acted in a servile manner toward president Allan Rock

[6] In relation to Sting number 2: "February is Black history month in Canada and the US. U of O Watch believes that it is the right time not only to honour black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters", is capable of the following meanings:

a. Professor St. Lewis needs to be outed for acting in a servile manner toward president Allan Rock

b. Professor St. Lewis needs to be outed for acting in a servile manner toward the University of Ottawa
c. Professor St. Lewis needs to be outed for betraying black people or other minorities for personal gain our advantage
d. Professor St. Lewis needs to be outed for acting in an inauthentic manner toward the president Allan Rock

[7] In relation to sting number 3: "the same spirit prevailed when civil rights icon Ralph Nader suggested that US Pres. Obama needed to decide if he was going to be an uncle Tom", is capable of the following meanings:

a. Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of black persons or other minorities in order to serve the interests of president Allan Rock
b. Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of black persons are other minorities in order to serve the interests of the University of Ottawa
c. Professor St. Lewis has acted in an abjectly servile and deferential manner to president Allan Rock
d. Professor St. Lewis has acted in an abjectly servile and deferential manner to the University of Ottawa.

[8] In relation to Sting number 4: "the Student Appeal Center(SAC) of the student union at the University of Ottawa today released documents obtained by an access to information (ATI) request that suggests that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the University", is capable of the following meanings:

a. Professor St. Lewis acted in a servile manner toward University of Ottawa president Allan Rock (a white male)
b. Professor St. Lewis acted in a servile manner toward the University of Ottawa
c. Professor St. Lewis acted in an inauthentic manner toward University of Ottawa president Allan Rock

d. Professor St. Lewis acted in an in authentic manner toward the University of Ottawa
e. Professor St. Lewis conducted and authored an evaluation of the student appeal center report that was disingenuous or deceitful in order to promote the interests of University of Ottawa president Allan Rock University of Ottawa or herself
f. Professor St. Lewis sold herself out to the president of the University of Ottawa
g. Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the student appeal center report

[9] In relation to sting number 5: "the newly released ATI records are disturbing far beyond the nontenured professor St. Lewis uncommon zeal to serve the University administration", is capable of the following meanings:

a) professor St. Lewis conducted and authored her evaluation of the student appeal center report with a view TO obtaining tenure, a promotion or other personal benefit or gain
b) professor St. Lewis conducted and authored an evaluation of the student appeal center report that was disingenuous or deceitful in order to promote her self-interest or the interests of University of Ottawa president Allan Rock and/or the University of Ottawa
c) professor St. Lewis acted without integrity in conducting and authoring her evaluation of the student appeal center report

[10] In relation to Sting number 6: "the ATI records expose a high-level cover-up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but independent, as she characterizes her report on the first page", is capable of the following meanings:

a. Professor St. Lewis participated in a high-level cover-up of wrongdoing
b. Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC report
c. Professor St. Lewis was dishonest in her evaluation of the SAC report
d. Professor St. Lewis conducted and authored an evaluation of the SAC report that was disingenuous or deceitful in order to promote the interests of Allan Rock, University of Ottawa and/or herself.

[11] In relation to Sting number 7: "Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents

his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch), is capable of the following meanings:

a) Professor St. Lewis acted without integrity and conducting and authoring her evaluation of the SAC report

b) Professor St. Lewis was dishonest in conducting and authoring an evaluation of the SAC report

c) Professor St. Lewis conducted and authored an evaluation of the SAC report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.

[12] In relation to Sting number 8: "I did not say that Prof St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the University to its now more than evident problem of systemic racism: see all posts of U of O racism HERE", was capable of the following meanings:

a. Professor St. Lewis acted in a servile manner toward president Allan Rock when conducting and authoring her evaluation of the SAC report
b. Professor St. Lewis acted in a servile manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC report
c. Professor St. Lewis acted in an inauthentic manner toward University of Ottawa president Allan Rock when conducting and authoring her evaluation of the SAC report
d. Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC report
e. Professor St. Lewis lacks integrity

[13] When read in the context that Professor St. Lewis had agreed to undertake a review of the SAC report which alleged systemic racism in the academic fraud process and that she was providing her evaluation of that report as a lawyer, law professor and expert in the field of Human Rights and Research, the words in their natural and ordinary meaning would more than

likely be considered defamatory by the ordinary fair-minded individual. They more than probably would be viewed as an attack on Professor's St. Lewis honesty, independence and professionalism. As such, the words are capable of lowering the plaintiff in the estimation of an ordinary, objective, reasonable member of society who does not have overly fragile sensibilities.

[14] On the other hand, I am not satisfied that the same reasonable person would likely give the impugned words the other meanings alleged by the plaintiff. Most of these other alleged meanings talk of being a traitor to black people or denigrating black people or supporting racism. I am of the view that these are not meanings which naturally flow from the words themselves or any reasonable inference from the words themselves in the overall context in which the words were written and published. Therefore the remaining meanings alleged by the plaintiff will not be submitted to the jury.

Justice M. Z. Charbonneau

Date: May 27, 2014

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 3209

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Joanne St. Lewis, Plaintiff,

AND

Denis Rancourt, Defendant (Not present)

BEFORE: M. Z. Charbonneau

COUNSEL: Richard G. Dearden and Anastasia Semenova Counsel for the Plaintiff

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ENDORSEMENT

M. Z. Charbonneau

Released: May 27, 2014

Court File No.: 11-57657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $2000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

DEFAULT JUDGMENT
IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 23, 2011

Issued by: _____

Address of Court Office:
161 Elgin Street
Ottawa, Ontario K2P 2K1

TO:

Denis Rancourt

CLAIM

1. The Plaintiff, Joanne St. Lewis, claims the following relief against the Defendant Denis Rancourt:

(a) general damages for defamation in the amount of $500,000;

(b) aggravated damages for defamation in the amount of $250,000;

(c) punitive damages for defamation in the amount of $250,000;

(d) an interlocutory injunction and a permanent injunction to restrain the Defendant from any further publication of the defamatory statements complained of in this Statement of Claim;

(e) an Order requiring the Defendant to permanently remove or take down the defamatory statements complained of in this Statement of Claim from any electronic database where they are accessible;

(f) an Order requiring the Defendant to assist the Plaintiff in obtaining the removal or take down of the defamatory statements complained of in this Statement of Claim from: Internet search engine caches (such as Google); any electronic database where the defamatory statements are accessible; and other Internet websites operated by third parties;

(g) a mandatory injunction requiring the Defendant to publish a full and complete retraction of the defamatory statements complained of in this Statement of Claim and a full and complete apology approved by the Plaintiff;

(h) pre and post-judgment interest on all amounts claimed in accordance with the *Courts of Justice Act*;

(i) costs on a full indemnity basis; and

(j) such further and other relief as this Honourable Court may deem just.

Professor Joanne St. Lewis

2. The Plaintiff Joanne St. Lewis is an Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa ("Professor St. Lewis") and resides in the City of Ottawa. Professor St. Lewis obtained her tenure in 2001. Professor St. Lewis was called to the Bar of British Columbia in 1984 and was admitted as a member of the Law Society of Upper Canada in 1997.

3. Professor St. Lewis is the Director of the POWER: Progress & Opportunities for Women's Equality Rights/Africa-Canada which is located at the Human Rights Research and Education Centre of the University of Ottawa. The project is currently engaged in examining the links between sexual violence in the Congo and the extractive industries/natural resource sector.

4. Professor St. Lewis' life work has been dedicated to the promotion of equality rights in the law and legal culture, including racial and gender equality. Professor St. Lewis has worked to promote equality rights in numerous capacities, including as:

(i) co-chair of the Canadian Bar Association Working Group on Racial Equality and author of the report *Virtual Justice: Systemic Racism in the Canadian Legal Profession*;

(ii) Advisor to the Centre for Research-Action on Race Relations (Montreal);

(iii) Advisory Council member of the Canadian Lawyers for International Human Rights (CLAIHR);

(iv) Faculty Advisor to the Black Law Students Association of Canada (BLSAC).

5. Professor St. Lewis was the first and only Black woman to be elected as a Law Society of Upper Canada Bencher in its 214 year history. Professor St. Lewis served in various capacities including as Chair of the Equity and Aboriginal Issues Committee, Chair of the Human Rights Monitoring Group and Chair Bicentennial Report Working Group.

6. Professor St. Lewis was the founding Director of the Education Equity Program at the Faculty of Law in 1989. Prior to that she held positions as the Executive Assistant to the

Chief Commissioner of the Ontario Human Rights Commission and was a Race Relations Consultant with the Ontario Race Relations Directorate. In 1986, she was the Executive Assistant to the Grand Chief of the Crees of Quebec where she contributed to the negotiations of the $100 million 1986 La Grande Agreement.

7. Professor St. Lewis has been involved in the development of anti-racist decision-making since 1990. Her paper "Meeting at the Crossroads: Judicial Decision-Making in a Racially Sensitive Context" for the Canadian Judicial Centre (CJC) was the catalyst for the creation of the first anti-racism training video for federally appointed Judges. She also served as a member of the Social Context Education Curriculum Committee of the National Judicial Institute (successor to the CJC) and conducted national training programs for the Judges.

8. Professor St. Lewis served as a technical Advisor to the World Council of Churches, Programme to Combat Racism in 1990-1991 including participating in their first Continental Consultation on Racism in the Americas and the Caribbean.

9. In 1992, she became the first woman of colour to serve as the Executive Director of the Women's Legal Education and Action Fund (LEAF).

10. From 1992-94, Professor St. Lewis was a steering committee member of the African-Canadian Legal Clinic where she was a key person on the strategic team that lead to the formation and funding by the Government of Ontario of a legal clinic devoted to using a test case litigation strategy to address racism against African-Canadians.

11. Professor St. Lewis was the Special Advisor on Race Relations to the Deputy Attorney General (Ontario). Her work lead to the formation of the ground-breaking Commission on Systemic Racism in the Ontario Criminal Justice System and its report in 1995.

12. In 1996, Professor St. Lewis was asked to prepare an External Review Report of the Indigenous Black and Mi'kmaq Program at Dalhousie University by then Vice-President (Academic and Research) Deborah Hobson.

13. Professor St. Lewis's participation in a conference for CBC foreign correspondents lead to her contribution of a chapter entitled "The Role of Black Consciousness in North American Nation States" in *Clash of Identities: Media, Manipulation and the Politics of the Self* by James Littleton in 1996. She has commented extensively on issues related to racism and social policy including: CBC Sunday Edition (2006) on Youth, Crime and Jamaican Culture; CBC The Docket (2003) on Racial Profiling, and was a regular commentator on CBC Morningside with Peter Gzowski.

14. Professor St. Lewis prepared an independent report for the Manitoba Justice Inquiry Implementation Commission on Aboriginal Peoples and Employment Equity in 2000.

15. Professor St. Lewis has a commitment to independent media which began with her work with the Independent World Television founders in 2004. She assisted with the development of their Southern Africa network while on her sabbatical in South Africa in 2004. In 2005, she served as the IWT host at a Beverly Hills event attended by over 200 guests where Gore Vidal was the special guest. Her contributions supported the launch of www.therealnews.com in 2007.

16. In 2007, Professor St. Lewis was a panellist on the Abolition and the Eradication of Racial Discrimination in a youth forum hosted by then Governor-General, Her Excellency Michaëlle Jean, entitled *From the Abolition of the Slave Trade to the Elimination of Racial Discrimination.*

17. Professor St. Lewis has also participated in work relating to the intersection between art and racist representation. In 2008 she served as faculty advisor and artist participant in an exhibit entitled *Corrective Lenses: Challenging Representations of Women of Colour in Art.*

18. In March 2008, Professor St. Lewis hosted a series of events sponsored by the Ministry of Citizenship (Ontario) and at the request of The Hon. Jean Augustine, then Chair of the Ontario Bicentenary Commemorative Committee on the Abolition of the Slave Trade Act and Ontario Fairness Commissioner. She hosted a series of events (Routes to Freedom) including the largest Canadian international conference on the matter, a youth forum and

documentary film festival, a two-week art exhibit and a reception for heads of mission from countries affected by the slave trade. She organized a gala fundraiser, attended by Danny Glover, actor and President of the TransAFrica Forum, to launch the formation of the Routes to Freedom Graduate Law Scholarship for students from Africa.

19. Professor St. Lewis' work and contributions to the community in her role as a national expert in the area of anti-racist decision-making and critical race theory have been acknowledged by her peers and the broader community. She is the recipient of the 2001 Canadian Association of Black Lawyers Recognition Award of Black Women's Contribution to the Law, the 2008 DreamKEEPERS Life Achievement Award from the Martin Luther King, Jr. Day Coalition, the 2009 Canadian Association of Black Lawyers Outstanding Achievement Award, and was a 2009 Honoured Champion by the United Nations Association of Canada celebrating the 100th anniversary of International Women's Day.

20. Professor St. Lewis' work is recognized internationally. In August 2011, she is scheduled to teach in an Executive Program on Counter-Terrorism at the University of South California in August 2011, and in that capacity will lead the section on human factors (or racial profiling) for an international group of participants who are actively engaged in implementing counter-terrorism policies in their respective jurisdictions.

21. Professor St. Lewis is one of the founding members of the Black Women's Civic Engagement Network which has created two awards that celebrate the contribution of Black women to Canadian public life. She has received awards and spoken numerous times at Black History Month celebrations which are intended to bring awareness about the contribution of Black peoples to the social fabric of Canadian society.

Denis Rancourt

22. The Defendant Denis Rancourt is a former professor at the University of Ottawa. Mr. Rancourt publishes a blog entitled U of O Watch (uofowatch.blogspot.com) which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional

behaviour that is not consistent with the public good". The blog contains a multiplicity of attacks on the reputation of Allan Rock, the President of the University of Ottawa.

Student Appeal Centre Report

23. In November, 2008, Professor St. Lewis was serving as Director of the Human Rights Research and Education Centre of the University of Ottawa, when she was asked to prepare an evaluation of a report by the Student Appeal Centre of the Student Federation of the University of Ottawa ("Student Appeal Centre Report"). The Student Appeal Centre Report, which had been publicly released to the media, accused the University of Ottawa of systemic racism in its handling of academic fraud complaints against students.

24. Professor St. Lewis' point of contact with the University during the preparation of the evaluation was with then Vice-President Academic, Robert Major. Professor St. Lewis did not request, was not offered, and did not receive any compensation for the work she did in the evaluation of the Student Appeal Centre Report.

25. In the course of conducting the evaluation of the Student Appeal Centre Report, Professor St. Lewis met with representatives of the Student Appeal Centre and requested records and data necessary to conduct the evaluation, including, definitions for key terms such as "visible minority". The Student Appeal Centre did not provide Professor St. Lewis any data to assist in her evaluation of the Student Appeal Centre Report.

26. Professor St. Lewis' evaluation of the Student Appeal Centre Report was released on November 25, 2008 and was an advisory report – she had no decision-making powers regarding the matters dealt with by the Student Appeal Centre Report. Professor St. Lewis concluded that the Student Appeal Centre Report was methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University of Ottawa to identify the specific areas of concern or to assess the depth or existence of a problem.

27. Of particular concern to Professor St. Lewis was the allegation in the Student Appeal Centre Report that a lack familiarity with the concepts of plagiarism is inextricably tied to international or more particularly exclusively Asian women students, a conclusion that

could give rise to further stereotyping of these students as being more likely to commit academic fraud because of their educational background. She also noted that there was a clear lack of familiarity with the University's academic fraud process.

28. Professor St. Lewis made recommendations to deal with the serious allegations of possible systemic racism and procedural unfairness raised by the Student Appeal Centre Report. Recommendation #1 states:

> Recommendation 1: Conduct an independent assessment to determine whether systemic racism plays any part in the Academic Fraud process.
>
> That SAC [Student Appeal Centre] cooperate with the University in allowing it to undertake an independent analysis of the Academic Fraud data to identify and address any issues of systemic racism in the Academic Fraud process. All necessary measures should be taken to ensure the preservation of student privacy in the development of the report.
>
> The fact that the report did not succeed in its methodological attempts does not mean that there is not a problem that should be addressed. The University is bound by its obligations under the *Ontario Human Rights Code* and is committed to an inclusive community.

Professor St. Lewis' evaluation made nine other recommendations that were intended to address administrative or procedural issues alleged in the Student Appeal Centre Report.

29. On a blog published in December 2008, the Student Appeals Office of the Student Appeal Centre characterized Professor St. Lewis' evaluation of the Student Appeal Centre Report as an attempt to discredit student voices, but also noted that "Professor St. Lewis concludes her report with ten (10) recommendations that echo the SAC Report's recommendation and demands".

30. In December 2008, the Defendant Denis Rancourt published statements about Professor St. Lewis' evaluation of the Student Appeal Centre Report on his UofOWatch blog. The December 2008 blog (which was republished as part of his February 2011 blog) likened Professor St. Lewis' evaluation to academic fraud, and criticized the evaluation as unprofessional, intellectually dishonest and lacking in independence. The Defendant also predicted in his December 2008 blog that Professor St. Lewis was "in line for a promotion to Associate Professor soon".

31. Professor St. Lewis was made aware of the existence of the December 2008 blog shortly after its publication, but did not open or read the blog at that time, as she was unaware of any role that Denis Rancourt had in the preparation of the Student Appeal Centre Report and could not see how responding to him would address the concerns and recommendations she had expressed in her evaluation.

32. Between December 2008 and February 2011, Professor St. Lewis received unsolicited emails from Denis Rancourt that were sent to many faculty members outlining his employment dispute with the University of Ottawa which she did not read. Professor St. Lewis does not know Denis Rancourt personally or professionally.

The February 11, 2011 U of O Watch Blog

33. In February 2011, Denis Rancourt sent an email to Professor St. Lewis and University of Ottawa President Allan Rock that provided a link to a blog entry containing Professor St. Lewis' name, and invited Professor St. Lewis to provide any factual corrections or comments for posting on the blog. Consistent with past practice, Professor St. Lewis ignored the Defendant's blog and email.

34. In the weeks following the email, Professor St. Lewis was approached by her colleagues, students and strangers who informed her of a defamatory blog posted by Denis Rancourt, and offered her their support. Consistent with her past practice, Professor St. Lewis ignored the Defendant's February 11, 2011 blog.

35. In April 2011, Professor St. Lewis conducted a Google search of her name and was horrified to discover that Denis Rancourt's February 2011 blog now appeared on the front page of the Google search results for "Joanne St. Lewis" and referred to her as Allan Rock's House Negro. The page one Google search result reads:

> **U OF O WATCH: Did Professor *Joanne St. Lewis* act as Allan Rock's ...**
>
> 11 Feb 2011 ... Did Professor *Joanne St. Lewis* act as Allan Rock's house negro? February is Black History Month in Canada and the US. ...
> *uofowatch.blogspot.com/.../did-professor-**joanne-st-lewis**-act-as.html* - Cached

36. Within two days of Professor St. Lewis' discovery of the Google search result containing the racist and defamatory statement that she was a "House Negro", she discovered that its ranking changed from the fourth search result to the second search result on page one of her Google search results, indicating that measures were taken to give greater prominence to the Defendant's February 11, 2011 blog.

37. The Defendant's February 11, 2011 blog publishes Professor St. Lewis' photograph (which conveys to the world at large that she is Black) and the following text:

> Did Professor Joanne St. Lewis act as Allan Rock's house negro?
>
> February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters.
>
> The term "house negro" was defined by Malcolm X in his famous "The House Negro and the Field Negro" speech (see video below).
>
> The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom: **HERE**.
>
> The Student Appeal Centre (SAC) of the student union at the University of Ottawa today released documents obtained by an access to information (ATI) request that suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a **2008 SAC report** about systemic racial discrimination at the university.
>
> See today's SAC article **HERE**. See ATI documents released today by the SAC **HERE**.
>
> At the time, the St. Lewis report was critiqued by UofOWatch: **HERE**.
>
> The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration:
>
> The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.

The SAC article posted today quotes Rock from the ATI documents explaining to his staff how to preserve the appearance of an independent report and the importance of preserving this appearance, in true experienced federal politician style.

This is a most damning revelation against the former Minister of Justice and former Canadian Ambassador to the United Nations, one that should disturb any university student learning about professional ethics.

Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!).

Former VP-Academic **Robert Major** is also found stating to a concerned student that the "independent" St. Lewis report will definitively resolve the matter (of the troublesome SAC report). In his November 2008 email Major actually says:

"The University has received and will make public this week an evaluation, by an independent assessor, of the report of the Student Appeals Centre. I believe this analysis will answer your questions on the mandate of the Senate Appeals Committee and on the whole appeals process. I invite you to read it carefully."

When the bosses have such high professional ethics why would professors be any different?

38. The Defendant Denis Rancourt falsely and maliciously published the following highly offensive, racist and defamatory statements of and concerning Professor St. Lewis in the February 11, 2011 blog entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro":

i. "Did Professor Joanne St. Lewis act as Allan Rock's house negro?"

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward President Allan Rock (a white male) and the University of Ottawa;

c. acted in an inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;

d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of President Allan Rock (a white male) and the University of Ottawa;

e. supports racism;

f. cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. has betrayed Black people or other minorities in order to gain a privileged position at the University of Ottawa or for personal gain or advantage;

h. lacks integrity;

i. was biased in the conduct and authoring of her evaluation of the SAC Report.

ii. "February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. needs to be "outed" for acting in a servile and inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;

b. needs to be "outed" for forfeiting her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

c. needs to be "outed" for supporting racism and cooperating in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

d. needs to be "outed" for betraying Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

e. is a fraud;

f. is untrustworthy;

g. is a sell out to the Black community;

h. sold herself out to the President of the University of Ottawa;

i. falsely misrepresents her actual beliefs about Blacks.

iii. "The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. has abased herself on this or previous occasions;

b. has acted in an abjectly servile and deferential manner to, President Allan Rock and the University of Ottawa;

c. has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of President Allan Rock and the University of Ottawa.

iv. "The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university".

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

c. acted in an inauthentic manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

e. supported racism;

f. cooperated in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

h. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of University of Ottawa President Allan Rock, the University of Ottawa and/or herself;

i. sold herself out to the President of the University of Ottawa;

j. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;

k. was biased in conducting and authoring her evaluation of the SAC Report.

v. "The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration"

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion, or other personal benefit or gain;

b. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote her self interest or the interests of University of Ottawa President Allan Rock and/or the University of Ottawa;

c. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;

d. was biased in conducting and authoring the evaluation of the SAC Report.

vi. "The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. participated in a high level cover up of wrongdoing;

b. was biased;

c. was dishonest in her evaluation of the SAC Report;

d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself;

e. acted without integrity in conducting and authoring her evaluation of the SAC Report.

vii. "Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)."

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. was biased;

b. acted without integrity in conducting and authoring her evaluation of the SAC Report;

c. was dishonest in conducting and authoring an evaluation of the SAC Report;

d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.

39. The Comments posted in reaction to the February 11, 2011 U of O Watch blog include:

(i) "This is the most absurdly racist thing I've ever read. Please refrain from using freedom of speech as a curtain to hide behind when making such malicious and racist comments".

(ii) "Who are you to use that term? Your racist comment has lost all validity of any other critique you are trying to make. And for the record, I doubt Malcolm X would have been onside with you about this one".

(iii) "CHECK YOUR PRIVILEGE RANCOURT cause this is straight up racist".

(iv) "... For you, as a privileged white man; to believe that you have the insight into the black struggle to know when a black individual is or is not behaving according to your arbitrary code of black behavior is stupid. Your communication and intent IS racist and rooted in your own ignorance. You pathetically high-jacked black history month in order to further your own agenda. It is not racist that you, as a white man, are unable to call a black person a house negro. In fact, it is racist that you think you can."

May 16, 2011 Notice

40. Counsel for Professor St. Lewis served Mr. Rancourt with a Notice on May 16, 2011 which states:

1. We are counsel for Joanne St. Lewis regarding publications authored by you and posted on your website "U of O Watch": http://uofowatch.blogspot.com/search/label/Joanne%20St.%20Lewis.

2. "U of O Watch" purports to expose institutional behaviour that is not consistent with the public good. Your website contains false, defamatory and highly offensive racist statements about Ms. St. Lewis. You have acted maliciously and with callous disregard for Ms. St. Lewis' personal and professional reputation by publishing these defamatory statements which include:

(i) Did Professor Joanne St. Lewis act as Allan Rock's house negro?

(ii) law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC Report about systemic racial discrimination at the university

(iii) the newly released ATI records are disturbing far beyond the non-tenured professor St. Lewis' uncommon zeal to serve the university administration. The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.

(iv) when the bosses have such high professional ethics why would professors be any different?

3. Without prejudice to Ms. St. Lewis' right to commence an action against you and to attempt to mitigate the damages your defamatory statements have caused Ms. St. Lewis, we demand that the false, defamatory and highly offensive racist statements about Ms. St. Lewis be immediately taken down.

The May 18, 2011 U of O Watch Blog

41. In a flagrant and reckless disregard of the May 16, 2011 Notice from the Plaintiff's counsel, the Defendant refused to take down his defamatory statements, posted the May 16, 2011 Notice (referring to the Notice as a "new threat"), and published additional defamatory statements about Professor St. Lewis on his blog.

42. In a blog dated May 18, 2011 entitled "Top dog Canada freedom of the press lawyer targets U of O Watch blog", the Defendant falsely and maliciously published the following racist and defamatory statements of and concerning Professor St. Lewis.

I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that **she acted like a house negro** and because it is my reasoned opinion that she acted like a house negro. She did so while **attempting to discredit** a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism **HERE**".

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);

b. acted in a servile manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;

c. acted in an inauthentic manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;

d. forfeited her cultural and racial identity, heritage and traditions to serve the University of Ottawa's interests in discrediting the Student Appeal Centre Report;

e. supports racism;

f. cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

g. has betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

h. lacks integrity;

i. was biased in the conduct and authoring of her evaluation of the Student Appeal Centre Report.

43. The May 18, 2011 blog republishes the February 11, 2011 blog by linking to the content of the February 11, 2011 blog, as follows: "Here, now, Dearden finds himself **threatening** an untenable case about **THIS** blog post concerning professor Joanne St. Lewis". The Plaintiff repeats and relies upon all of the meanings pleaded above regarding the defamatory statements published in the February 11, 2011 blog.

May 20, 2011 Notice

44. In response to the Defendant's May 18, 2011 blog, counsel for Professor St. Lewis served the Defendant Mr. Rancourt with another Notice dated May 20, 2011:

> 1. In a flagrant and reckless disregard of my letter dated May 16th notifying you to take down your defamatory statements about Professor Joanne St. Lewis, you have responded by publishing additional defamatory statements. And for the record, my letter is not a "threat" as you state in yesterday's publication. My letters are notices to you to cease defaming Professor St. Lewis and to immediately take down those defamatory statements.
>
> 2. Your additional defamatory and offensive statements in your U of O Watch blog include:
>
> > "I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro.
> >
> > She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racisms: See all posts of U of O racism HERE".
>
> 3. You are notified that your blog of yesterday is defamatory, offensive, malicious and seriously damaging to Professor St. Lewis' reputation. Take it down immediately. As previously notified, do not delete or destroy any records pertaining to your blog regarding this matter.

May 23, 2011 Blog

45. In a flagrant and reckless disregard of the May 20, 2011 Notice from counsel for the Plaintiff, the Defendant refused to take down his defamatory statements about Professor St. Lewis and published a blog dated May 23, 2011 entitled : "U of O Watch update: Richard Dearden Promises to Sue". The Defendant posted on his blog the email exchanges between him and counsel for the Plaintiff during the period May 20,2011 – May 23, 2011. The Defendant has also posted the May 16 and 20, 2011 Notices from counsel for the Plaintiff on his blog.

46. As of the date of the issuance of the Statement of Claim, the defamatory statements about Professor St. Lewis have not been taken down by the Defendant and he has not published a retraction and apology. Further, as of the date of the issuance of this Statement of Claim, a Google search of "Joanne St. Lewis" will rank the Defendant's racist and defamatory "House Negro" blog (February 11, 2011) as the second item on page 1 of the Google search results for "Joanne St. Lewis". This prominent Google search result states in part "11 Feb 2011 ... Did Professor Joanne St. Lewis act as Allan Rock's house negro? February is Black History Month in Canada and the US..."

Legal Innuendoes

47. In addition to the natural and ordinary meanings set out above, the Plaintiff will prove at the trial of this action that the racial slur "House Negro" used in its historical context has a profound and potent meaning to Black persons in Canada, and bears the following true or legal innuendos when published to members of the Black community in Canada; a "House Negro" is:

a. a person who is a race traitor;

b. a person who is a pariah in the Black community;

c. a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

d. a person who has severed their bond with the Black community and their racial and cultural heritage.

Identification of the Plaintiff

48. The defamatory statements set out in this Statement of Claim refer to Professor St. Lewis and are of and concerning Professor St. Lewis.

Malice

49. There was no valid justification for the Defendant to include any reference to Professor St. Lewis' race as part of his publications about Professor St. Lewis' evaluation of the Student Appeal Centre Report. The Defendant published a photograph of Professor St. Lewis to deliberately let the world know that she was Black. The Defendant is a white male. The Defendant knew the meaning of the racial slur "House Negro" and deliberately ensured that everyone reading his blog knew the meaning of the slur by incorporating a link to Malcolm X's House Negro/Field Negro speech. The use of the racially defamatory slur "House Negro" by a White person against a Black person is racist, and constitutes a racially motivated appropriation of a slur that has a profound and potent meaning when used in the historical context of Malcolm X's House Negro/Field Negro speech. The Defendant's defamatory and racist statements which he refuses to take down are reckless, spiteful, excessive and were intended to cause serious damage to Professor St. Lewis' reputation.

50. The Defendant published the racist slur "House Negro" in its historical context by including in his blog a link to a YouTube video in which Malcolm X uses the slur to characterize the House Negro as a Black person who participates in the denigration and oppression of other Black people. The Defendant's use of the racial slur "House Negro" was knowing and deliberate and was calculated to cause the maximum damage to Professor St. Lewis, a Black person who has devoted her life's work to the promotion of equality. The Defendant has maliciously accused Professor St. Lewis of betraying her Black community by being a House Negro to the President of the University of Ottawa (the white male "master"). The excessive defamatory statements maliciously attack

Professor St. Lewis' credibility in the Black community and her bond with the Black community that is so crucial to her personal and professional reputation.

51. The Defendant published the defamatory statements about Professor St. Lewis for an indirect motive, ulterior purpose and improper purpose. The Defendant defamed Professor St. Lewis in furtherance of his personal animosity towards President Allan Rock and the University of Ottawa which terminated him as a Professor. The Defendant was not criticizing Professor St. Lewis' evaluation of the Student Appeal Centre Report – he attacked her as an individual. The Defendant maliciously portrayed Professor St. Lewis as the "House Negro" to the University of Ottawa's white male President to denigrate her as a human being and to convey that she was putting the "fix" in for her white male "master" when she conducted and authored her evaluation of the Student Appeal Centre Report.

52. The Defendant's blog intentionally omits portions of Professor St. Lewis' evaluation (such as Recommendation 1) that contradict his defamatory statements. The Defendant never interviewed Professor St. Lewis before he published his defamatory statements. The Defendant's blogs were irresponsible publications.

53. The Defendant acted with malice by ignoring the May 16 and 20, 2011 Notices from the Plaintiff's counsel that he immediately remove and take down the false, defamatory and highly offensive racist statements he published about the Plaintiff. Further, he also republished the original defamatory publication (February 11, 2011) and published additional highly offensive and racist defamatory statements about the Plaintiff in response to the May 16, 2011 Notice from counsel for Professor St. Lewis. The Defendant continues to ignore the Notices dated May 16, 2011 and May 20, 2011 that demanded that he immediately take down the false and defamatory statements. Further, the Defendant has not retracted his defamatory statements and has not apologized to Professor St. Lewis.

54. Steps have been taken to have the Defendant's February 11, 2011 blog appear on the first page of the Google search results for "Joanne St. Lewis", with the intention of having persons who Google search "Joanne St. Lewis" to read that she is a "House Negro" to

University of Ottawa President Allan Rock. The traffic on the blog containing the racist slur far exceeds the traffic for any other blog by the Defendant. The Defendant has sought to exploit Professor St. Lewis' public profile and reputation to gain attention to his blog and his grievances with the University of Ottawa and President Allan Rock. Coupling the racist insults to Black History Month and a prominent Black intellectual was also exploitative in nature.

Injunction

55. Professor St. Lewis is a lawyer who works in the field of social justice. She is a national expert in the area of anti-racist decision-making and critical race theory. Her work and contributions to community have been acknowledged by her peers and the community. She is the recipient of numerous awards, including the 2001 Canadian Association of Black Lawyers Recognition Award of Black Women's Contribution to the Law, 2008 DreamKEEPERS Life Achievement Award from the Martin Luther King, Jr. Day Coalition, 2009 Canadian Association of Black Lawyers Outstanding Achievement Award and a 2009 Honoured Champion by the United Nations Association of Canada celebrating the 100th anniversary of International Women's Day.

56. Professor St. Lewis' work extends beyond the boundaries of the University of Ottawa and Canada. For instance, Professor St. Lewis will teach in an Executive Program on Counter-Terrorism at the University of South California in August 2011. She leads the section on human factors (or racial profiling) for an international group of participants who are actively engaged in implementing counter-terrorism policies in their respective jurisdictions. In past years, Professor St. Lewis has been the sole Canadian instructor in the program and the only Black woman. The class will be international in nature. It would not be unexpected for participants to Google search their instructor. The continued presence of the Defendant's defamatory statements will have a chilling effect on future students, colleagues, community members and those who might seek Professor St. Lewis for speaking engagements or consultations in government, organizations and corporations. This damage is irreparable.

57. Steps have been taken to give major prominence to the Defendant's attack on the reputation of Professor St. Lewis by having the Defendant's blog appear on the first page of the Google search results for "Joanne St. Lewis". An injunction must issue to compel the Defendant to take down his racist and defamatory publications and to prevent the Defendant from continuing his flagrant and reckless disregard of the Plaintiff's personal and professional reputation.

Damages

58. The Defendant's publication of the defamatory statements complained of in this Statement of Claim have exposed Professor St. Lewis to contempt, ridicule and hatred, and were calculated to lower Professor St. Lewis' personal reputation and professional reputation in the estimation of right thinking persons generally. The Defendant has caused mental distress to Professor St. Lewis by targeting her with his false, malicious and racist attack on her character, by denigrating her professional work through use of her racial and cultural identity as a Black woman, and by attacking her affiliation and bond with the Black community with which she identifies by calling her a House Negro. The defamatory statements have severely damaged Professor St. Lewis' reputation and have caused and will continue to cause damage, loss and injury to Professor St. Lewis.

59. The Defendant's conduct and actions have aggravated the Plaintiff's damages.

60. The Defendant's conduct and actions are reprehensible, insulting, high-handed, spiteful, and outrageous. Such conduct warrants condemnation by this Court by means of an award of punitive damages. Professor St. Lewis will rely upon the entire conduct of the Defendant before and after the May 16, 2011 Notice to the date of judgment in this action. In the event that punitive damages are awarded against the Defendant, Professor St. Lewis will donate half of the award of punitive damages to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund.

Place of Trial

61. Professor St. Lewis requests that the trial of this action take place in the City of Ottawa.

Date: June 23, 2011

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Counsel for the Plaintiff

OTT_LAW\ 2830021\2

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No.
11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

STATEMENT OF CLAIM

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Counsel for the Plaintiff

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

STATEMENT OF DEFENCE

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(1) The Defendant admits the allegations contained in paragraphs 48, 61 of the Statement of Claim.

(2) The Defendant has no knowledge in respect of the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 35, 55 of the Statement of Claim.

(3) The Defendant denies all other allegations contained in the Statement of Claim, unless expressly admitted below.

The following are consecutively numbered paragraphs of allegations of material fact relied on by way of defence.

Chronology of material facts

The Defendant

(4) For twenty three years until 2009 the Defendant was a physics professor at the University of Ottawa; starting in 1987 jointly as an Assistant Professor and Natural Sciences and Engineering Research Council of Canada University Research Fellow, then promoted to Associated Professor and granted tenure in 1992, and promoted to Full Professor in 1997.

(5) In addition to his sustained scientific work, the Defendant has since approximately 2004 been an outspoken defender of student and minority rights and the rights of all oppressed peoples, via his university courses, community service, public lectures, blog and other writings, weekly radio show, media commentary, and community organizing efforts. The defendant has high regard for and has written about the American Black liberation struggle, such as the works of iconic figures Assata Shakur and Malcolm X.

The U of O Watch blog

(6) In May 2007 the Defendant started the blog “U of O Watch” with (as the name implies) the express purpose via public criticism of pressuring the University of Ottawa towards improved institutional behaviour. The blog was also expressly an actuation of a professor’s

statutory academic freedom “right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.”

(7) The “U of O Watch” blog was included in the Defendant’s academic staff annual report every year since May 2007 (for academic year 2006-2007) that the Defendant was a professor at the University of Ottawa. The blog was an integral part of the Defendant’s professional activities protected under the purview of the Defendant’s academic freedom.

(8) In August 2007 University of Ottawa VP-Resources Victor Simon sent the Defendant a Notice pursuant to the *Libel and Slander Act* for two July 2007 posts on the “U of O Watch” blog about the VP-Resources and about the university president. The Defendant immediately made a claim to the University’s liability insurance and no further action was pursued by the university in the matter. The matter was reported in the media.

(9) In 2008 the Defendant was disciplined by the University of Ottawa for using images from the university’s web site on the “U of O Watch” blog, despite the university’s qualified permission to professors to use the images. The matter was grieved under the Defendant’s collective agreement and the grievances have not yet been heard in binding labour arbitration.

(10) The “U of O Watch” blog has been run with continuity in style and content since its initiation in 2007 to the present. It has regularly made allegations of administrative and professional malfeasance based on verified facts. The Defendant was never disciplined or knowingly investigated for discipline by the University of Ottawa for any of the blog’s written content.

(11) The "U of O Watch" blog has been continuously and regularly critical of powerful groups and institutions other than the University of Ottawa, such as the pro-Israel lobby in Canada and its influence on university affairs (sixteen blog posts labelled "Israel lobby" to date).

(12) The Defendant receives no direct or indirect financial benefit from the "U of O Watch" blog or from any broadcast activities and no financial benefit arising from readership or web connectivity.

(13) Contrary to the Plaintiff's allegations, the Defendant does not and has never "taken steps" to influence the Google rankings of blog posts, nor does the Defendant have knowledge about how Google search results can be manipulated.

The SAC Report

(14) On November 12, 2008, the Student Appeal Centre (SAC) of the Student Federation University of Ottawa (SFUO) released a report entitled "Student Appeal Centre 2008 Annual Report - Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa" (hereafter the "SAC Report"). Several media news articles followed the release of the SAC Report.

(15) The 16-page SAC Report, described three case studies in some detail, included four tables of data and reported that: "Out of the 48 students who consulted the Student Appeal Centre between November 1, 2007 and October 31, 2008 with cases of academic fraud, 71% were visible minorities. Arab, Black and Asian men and women – these are the students that most often get accused of academic fraud." and "Out of the 388 students who consulted the

Student Appeal Centre, 47% were women and 45% were visible minorities." The SAC Report made seventeen "Recommendations and Demands", some of which were implemented at the University of Ottawa.

(16) The 2008 SAC Report was the first public report about systemic racism at the University of Ottawa. The University of Ottawa to this date does not have an anti-discrimination policy. In 2011 many high profile allegations of systemic racism and tribunal cases against the University of Ottawa were reported nationally and regionally in the media.

The University's counter report

(17) Following the release of the 2008 SAC Report, on the same day November 12, 2008, university president Allan Rock coordinated several University of Ottawa executives and staff, including VP-Academic Robert Major, VP-Resources Victor Simon, VP-Governance Nathalie Des Rosiers and the director of media relations, in strategizing to mitigate the public image impact of the SAC Report on the University. On November 12, 2008, the Plaintiff, law professor Joanne St. Lewis, agreed to write a critical "response". It was immediately decided to produce a counter report that would be authored by the Plaintiff.

(18) On November 16, 2008, the Plaintiff sent her "draft evaluation of the SAC report" to President Allan Rock, VP-Academic Robert Major and former University Secretary Henry Wong, with the note "I am happy to respond to any suggestions that you may have."

(19) On November 17, 2008, Robert Major informed the Plaintiff, with Allan Rock in cc, that he would circulate her "document" to colleagues of the "admin committee" and that he had the

intent of responding to the Plaintiff the next day. On the same day, Robert Major sent a request to Allan Rock and others to provide immediate feedback on the Plaintiff's document. On the same day, Allan Rock provided feedback and also explained to members of the Administrative Committee of the University and to University media relations staff how to mitigate his concern that the Plaintiff's report might not appear to be "independent."

(20) At the November 17, 2008, University of Ottawa Board of Governors meeting Allan Rock is reported by the print media as having stated "I know enough about the work that's been done to date to tell you that we're going to disagree very strongly that there's any evidence to support the allegations that have been made," in reference to the University's (Plaintiff's) evaluation of the SAC Report.

(21) On November 18, 2008, the Plaintiff sent her "final report of an evaluation of the Student Appeal Centre 2008 Annual Report" to Allan Rock, Robert Major and others, with the note "I look forward to your comments." On the same day Allan Rock approved the Plaintiff's "final report" and personally managed a communication strategy for the Plaintiff's report to obtain the broadest possible media attention, including securing media interviews for the Plaintiff. The University's media communication exercise about the Plaintiff's report continued into late November 2008 and included exchanges with the Plaintiff about media strategy and messaging content.

(22) On November 24, 2008, in a written communication to a university community member, VP-Academic Robert Major referred to the University's (Plaintiff's) evaluation as a soon to be released public evaluation "by an independent assessor".

(23) On November 25, 2008, the University of Ottawa released the Plaintiff's report about the SAC Report in a news release entitled "The University of Ottawa releases its evaluation of the Student Appeal Centre 2008 Annual Report". The news release linked to the Plaintiff's report about the SAC Report, posted on the University's corporate web site.

(24) In the first line of the Plaintiff's report about the 2008 SAC Report, dated November 15, 2008, and released November 25, 2008, the Plaintiff characterizes her report as an "independent evaluation". Misrepresentation of one's academic research is academic fraud. In a media news article published on November 26, 2008, the Plaintiff is said to have "laughed at the suggestion that she was not acting independently of the university administration" and is quoted as characterizing the charge of not being independent as a "rhetorical flourish".

(25) On November 26, 2008, Allan Rock published a post on his "Rock Talk" president's blog entitled "Evaluation Report of the Student Appeal Centre (SAC) 2008 Annual Report". Mr. Rock in his post linked to the University press release and to the Plaintiff's report but not to the SAC Report.

(26) The Plaintiff's 2008 report for the university about the 2008 SAC Report has infringed the rights of minority students to be protected from discrimination by impeding the needed institutional response and by delaying development and implementation of a needed institutional anti-discrimination policy (to the present date), thereby allowing the many egregious high-profile University of Ottawa racial discrimination cases reported in the media in 2011 to occur.

<u>December 2008 U of O Watch blog post</u>

(27) On December 6, 2008, a blog post entitled "Rock Administration Prefers to Confuse 'Independent' with 'Internal' Rather Than Address Systemic Racism" was posted on the "U of O Watch" blog:

(i) The December 6, 2008, blog post referred to the Plaintiff, in the context of her report about the SAC Report, as a "service intellectual".

(ii) The blog post described the Plaintiff's "attempt to pass an internal report as an independent report" as constituting "intellectual dishonesty".

(iii) The blog post described the Plaintiff's report about the SAC Report: as not independent,

(iv) as "far from being of professional calibre",

(v) as "*prima facie* intended to diffuse a media and public relations image management liability for the University," and

(vi) as having "an unprofessional tone throughout [...using a] language that is not characteristic of objectivity."

(vii) The blog post criticized the Plaintiff's report's main statistical argument (about sample size) as obviously incorrect.

(viii) The blog post criticized the Plaintiff's report's individual recommendations variously: as "her position is the absurd one...",

(ix) as constituting "itself systemic racism",

(x) as pleasing the university executives,

(xi) as affirming the "position of the supremacy of western academic practice, while being insensitive to cultural diversity", and

(xii) as being "paternalistic".

(xiii) The blog post described the Plaintiff's report's main recommendation to obtain the SAC data as being improper, confused, contradictory, and harmful to students; the proposal was characterized as "get that SAC data and shred it so it can't hurt us any more".

(xiv) The blog post suggested that the Plaintiff in writing her report was serving her employer for illegitimately-obtained advantage as "I predict that St. Lewis is in line for a promotion to Associate Professor soon."

(28) On December 7, 2008, the Defendant, as a university colleague, made the Plaintiff aware of the December 6, 2008, "U of O Watch" post and invited comment. The Plaintiff has never directly or indirectly communicated to the Defendant about the December 6, 2008, "U of O Watch" post, nor has the Defendant ever denied or attempted to correct the December 6, 2008, "U of O Watch" post.

December 2008 SAC blog post

(29) On December 17, 2008, the SAC posted a critique of the Plaintiff's report about the SAC Report on the SAC's blog:

(i) The SAC blog post questioned the possibility that the Plaintiff's report could be "independent",

(ii) noted that the Plaintiff's report on the one hand concluded "that the SAC's data is too limited to enable any analysis supporting the Centre's claims" yet on the other hand made mostly the same recommendations as in the SAC Report, and

(iii) critiqued the asymmetry in the University's treatment of the SAC Report compared to the Plaintiff's report about the SAC Report.

(iv) The SAC blog post concluded: "*The Student Appeal Centre denounces the University of Ottawa's tactics as an attempt to discredit student voices. Professor St. Lewis' accusation of the SAC report as "methodologically flawed" not only detracts from the issues of racism and injustice on campus, but also silences the valuable student perspective on matters of appeals and the broader student/university relationship.*"

(v) In its blog post the SAC also clarified that its 388 cases were official cases and that its continuing concern about system racism was also based on "over 400 informal consultations."

The Plaintiff has never denied or attempted to correct the December 17, 2008, SAC blog post.

Plaintiff appointed to conduct university review

(30) On March 20, 2009, the Plaintiff wrote to Robert Major, Allan Rock and dean of law Bruce Feldthusen to express thanks for confirming by letter the Plaintiff's appointment by the University to "conduct a systemic review of the student academic fraud appeals process."

(31) On March 24, 2009, Robert Major wrote to the SAC asking it to provide all its data related to systemic racism to the Plaintiff to assist the Plaintiff in conducting a systemic review of the student academic fraud appeals process. The SAC refused on the basis that the university already had access to all the academic appeals data except the identities of the students in the sub-group of appellants who filed their cases with the SAC.

February 2011 SAC blog post

(32) On February 11, 2011, the SAC posted a post entitled "Freedom of Information Documents Show Joanne St.Lewis' Lack of Independence from Central Administration" on the SAC's blog and released access to information (ATI) records it obtained in the matter of its 2008 SAC Report. The SAC blog post stated and implied:

(i) that the Plaintiff's report about the 2008 SAC Report was not independent,

(ii) that the Plaintiff only browsed a few lines of the SAC Report before expressing outrage and accepting to write a rebuttal,

(iii) that the Plaintiff sent a draft to both Allan Rock and Robert Major saying she was "happy to respond to any suggestions",

(iv) that Allan Rock requested a change in wording to the Plaintiff's draft,

(v) that Allan Rock coordinated how to make the Plaintiff's report appear "independent",

(vi) that the University arranged for the Plaintiff to speak on CBC morning radio about her evaluation of the 2008 SAC Report,

(vii) that Robert Major gave the Plaintiff content suggestions for her CBC radio interview,

(viii) that the Plaintiff reported back to Robert Major that she had worked in the new suggested information,

(ix) that in March 2009 the Plaintiff asked the university administration to write to the SAC "asking them to cooperate with me in the sharing of the data and reassuring them that I will be independent of the University...".

(33) The February 11, 2011, SAC blog post concludes about the Plaintiff:

"The access to information documents show a close collaboration between the Administration and St.Lewis in elaborating the final report, in securing media access, and

in dealing with media messaging. In addition, there is troubling evidence of a cover up of the lack of independence engineered by the President himself.

Joanne St.Lewis was an untenured professor charged with a high profile task and she elaborated her final report and her media work in communication with the Administration, yet she wrote in her report that her evaluation was "independent". She knew or should have known that her high profile public report about racism in academic fraud appeals could not be characterized as independent.

The most troubling aspect of the St.Lewis exchanges with the Administration and their report is a total lack of admitting the possibility of the systemic racism or unequitable procedure indicated by the SAC report."

(34) The Plaintiff has made no attempt to deny or correct the February 11, 2011, SAC blog post on the official blog of the Student Appeal Centre of the Student Federation University of Ottawa, or to mitigate any perceived damage it directly may have caused to the Plaintiff's reputation.

February 2011 U of O Watch blog post

(35) On February 11, 2011, a blog post entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" was posted on the "U of O Watch" blog. The post linked to the SAC blog post of the same date and to the ATI records posted by the SAC. The post also linked to the 2008 SAC Report and to the December 6, 2008, "U of O Watch" blog post entitled "Rock Administration Prefers to Confuse 'Independent' with 'Internal' Rather Than Address Systemic Racism".

(36) The February 11, 2011, "U of O Watch" blog post makes only the following statements about the Plaintiff:

(i) that “released documents obtained by an access to information (ATI) request” “suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university.”

(ii) that “The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration: The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page.”

(iii) “Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!).”

(37) The February 11, 2011, “U of O Watch” blog post defines the term “house negro” as it is used in the blog post by citing and directly embedding the source, a video clip from a delivery of the Malcolm X speech in which Malcolm X defined the term.

(38) The term “house negro” (and its near-equivalents such as “an Uncle Tom”) is a common criticism of Black public figures, in the public discourse reported in the media, and it has an established meaning in these contexts.

(39) The February 11, 2011, “U of O Watch” blog post opens with the statement *“February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out*

Black Americans who were and continue to be house negroes to masters." as a general statement of position regarding social criticism in issues of public interest, specifically Black liberation.

(40) The February 11, 2011, "U of O Watch" blog post closes with the statement *"When the bosses have such high professional ethics why would professors be any different?"* This statement refers to the alleged unethical behaviours of President Allan Rock and VP-Academic Robert Major described in the post and is a commentary questioning the professional ethics of all professors.

(41) The ATI records obtained by the SAC amply provide a true factual basis for all of the SAC's and the Defendent's statements about the Plaintiff and about the University of Ottawa and its officers or staff.

(42) On February 16, 2011, the Defendant posted a 261-word considered comment to the "U of O Watch" blog post of February 11, 2011, explaining that the post's use of the term "house negro" is not racist. The comment included the general affirmation:

> *"I am entitled to express my views about which black persons are "house negroes" in my opinion even if I am white. I will not be deprived of one of the most powerful and meaningful expressions of class analysis in cantonized societies."*

(43) On May 17, 2011, the Defendant received a letter threatening to sue for damages dated May 16, 2011, from the Plaintiff's lawyer Mr. Richard G. Dearden. This letter made demands about the February 11, 2011, "U of O Watch" blog post and wrongly accused the Defendant of having broadcast racist statements.

May 18 2011 U of O Watch blog post

(44) On May 18, 2011, a blog post entitled "Top dog Canadian freedom of the press lawyer targets UofOWatch blog" was posted on the "U of O Watch" blog. In the blog post, the Defendant defends against the unwarranted May 16, 2011, racist allegations as:

(i) *"I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro."*

(ii) *"She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts about U of O racism HERE."*

(45) The latter two statements were the only two statements relating to the Defendant in the blog post. The first is intended only as an explanation that a correct and non-racist use of the term "house negro" is not racist, while the second is intended only to explain the justification for this correct use of the term. The post was entirely a response to the Plaintiff's lawyer's letter dated May 16, 2011.

(46) On May 23, 2011, the Defendant was served with a notice dated May 20, 2011, from the Plaintiff's lawyer. The notice made no mention of racism and complained about the May 18, 2011, "U of O Watch" blog post, without making any reference to the *Libel and Slander Act*.

May 23 2011 U of O Watch blog post

(47) On May 23, 2011, a blog post entitled "UofOWatch update::: Richard Dearden promises to sue" was posted on the "U of O Watch" blog. The post showed an email exchange between the Defendant and the Plaintiff's lawyer ending on May 23, 2011. The post stated about the exchange: "It also shows an aggressive lawyer not interested in discussing solutions or even providing clarifications on simple points."

Statement of Claim posted

(48) On June 23, 2011, the Defendant was served with the Statement of Claim, Court File No.: 11- 51657.

(49) On June 23, 2011, a blog post entitled "U of O law professor Joanne St. Lewis sues Rancourt for $1 million, will give half to a law student scholarship fund" was posted on the "U of O Watch" blog. The post linked to a posted electronic copy of the Plaintiff's Statement of Claim and quoted two paragraphs from the Statement of Claim. On and after June 24, 2011, media articles were published about the lawsuit, as were blog posts on law news and law discussion blogs.

(50) On July 12, 2011, the Defendant served and filed a Notice of Intent to Defend.

Absence of malice

(51) The Defendant denies the Plaintiff's allegations of malice. The Plaintiff's allegations of malice as improper motive are unfounded regarding a blog critical of the University of

Ottawa, run with continuity in style and content since 2007 when the Defendant was a Full Professor with tenure at the University of Ottawa, then (2007-2009) protected by the Defendant's academic freedom, involving strong opinions often conveyed with colourful and provocative language, informed by true and verified facts, and run for the express purpose of improving institutional behaviour on matters of public interest.

Absence of racism

(52) The Defendant denies the Plaintiff's allegations of racist statements. The Plaintiff's allegations of racist statements are frivolous, vexatious or an abuse of process; unfounded, opportunistic, and presented in the Statement of Claim in such a way as to obfuscate and conflate the legal issue of libel. There is no stated (Statement of Claim) reason or material valid legal reason to allege racist statements in this legal action. As a particular, the Defendant denies the Plaintiff's stated meanings of the phrase "house negro" as extrapolated and misguided and as inconsistent with the actual and established definition and media use in English North American society. As a particular, the Defendant denies the Plaintiff's implication that it is always unacceptable or improper for a white man to correctly use the term "house negro" in referring to the actions of a black woman; here in a media context of critical commentary in a matter of public interest, namely systemic racism and improper professional and institutional behaviour at a university.

Limitation of action

(53) The Defendant denies the words-complained-of bore the meanings alleged or any meaning defamatory of the Plaintiff.

(54) The legal action has not been initiated in a way, regarding limitation of action, which is consistent with the text, spirit and intent of the *Libel and Slander Act*. Although the threshold for establishing prima facie defamation is low, courts should not be too quick to find defamatory meaning. Triers of fact should be mindful of ensuring that the plaintiff's reputation is actually threatened by the impugned statements before turning to the available defences.

(55) The "U of O Watch" blog post of May 18, 2011, was not defamatory and was only a clarification in response to an aggressive letter (which was not a Notice pursuant to the *Libel and Slander Act*, nor was it understood to be such a Notice) alleging malice and racism. The May 18, 2011, blog post cannot reasonably on its own be liked to any harm. Yet it is the only broadcast within the limitation of action time frame of the *Act* to initiate the instant lawsuit.

(56) In addition, all of the Plaintiff's allegations of libel in the Statement of Claim relate to, stem from, and are repetitions of criticisms made publicly and discussed in the media in 2008, beyond the one-year statutory limitation of action for libel and slander. All these 2008 criticisms of the Plaintiff were made in the context of a highly publicized conflict between the Student Appeal Centre (SAC) of the student union (Student Federation of the University of Ottawa) and the University of Ottawa, were not denied or contested by the Plaintiff, and at least one criticism was admitted by the Plaintiff.

(57) Therefore, in this matter of the Plaintiff's counter report of the SAC Report, the Plaintiff's public reputation was established in the public's mind in 2008. The Plaintiff by her professional behaviour and her interactions with broadcast media in 2008 gave herself, a known Black professional woman, a widespread general reputation in the systemic racism matter of the 2008 SAC Report for serving her employer over acting along lines of strict professional ethics and responsibility. No new material allegations were broadcast in 2011.

Defence of truth

(58) In the alternative, if statements were defamatory at law, which is denied, the Defendant relies on the defence of truth for all statements, as entire statements in their contexts. The statements made as questions are true questions. The statements of explicitly expressed opinion are true statements of opinion.

Defence of fair comment

(59) In the alternative and in conjunction with the defence of truth, for all statements the Defendant relies on the defence of fair comment consisting of the following elements: (a) the comment is a matter of public interest; (b) the comment is based on fact; (c) the comment, though it can include inferences of fact, is recognizable as comment; (d) the comment satisfies the following objective test: could any person honestly express that opinion on the proved facts?

Defence of responsible reporting

(60) In the alternative and in conjunction with the defence of truth and with the defence of fair comment, for all statements the Defendant relies on the defence of responsible reporting, consistent with freedom of expression of the media in matters of public interest.

Government entity and third-party involvement – Charter

(61) In the alternative or as a preliminary matter, the legal action is improper because it constitutes an action by direct or indirect proxy, involving one or more institutions or groups and government funds or improperly used or attributed funds and/or resources.

(62) The Defendant's former employer and the Plaintiff's present employer the University of Ottawa (a public university) and/or its agents or representatives have illegally or improperly, directly or indirectly, verbally or otherwise, released the Defendant's personal and former employee information to the Plaintiff and/or to the Plaintiff's counsel.

(63) It is inconsistent with section 2(b) of the *Canadian Charter of Rights and Freedoms* for a government entity, such as a school board or university, to use government funds or tuition fee moneys, to enable a civil action for defamation by an employee – having acted improperly or contrary to professional ethics – against a citizen to inhibit justified criticism of the entity's

institutional governmental activities, including those of the employee. Universities were only granted independence status by the *Supreme Court of Canada* in order to effectively *defend* the academic freedoms of their professors and students, in order to allow protected criticisms of society's institutions including universities.

(64) It is essential that citizens be granted an absolute privilege against the threat of a civil action for defamation being initiated against them by their government (directly or by proxy).

(65) Further, in a case such as the instant one, a balance between an individual's protection against defamation and a free speech criticism (protected by the *Charter* and of a key societal public institution) cannot be achieved if the individual (the Plaintiff) benefits from improper or interested enabling third-party support.

(66) Given that half of the claimed punitive damages, which are denied, are stated (Statement of Claim) to be intended for donation to the University of Ottawa (the Plaintiff's employer), any/all facilitation, guarantees or resources from the University of Ottawa or any of its allies or partners for the instant action is/are improper.

(67) The instant action is intended to punish, intimidate and silence (the Defendant) a vocal, responsible and dedicated critic of many powerful groups, institutions and the University of Ottawa, regarding matters of public interest, and as such is frivolous, vexatious or an abuse of process.

No damages

(68) The Defendant denies that the Plaintiff has suffered any loss or damages for which he is responsible and puts the Plaintiff to the strict proof thereof.

(69) If the Plaintiff has suffered any damages or losses, which is denied, the Plaintiff has failed or refused to take proper steps to mitigate the damages or losses.

(70) The Plaintiff's damages, as claimed, are excessive, exaggerated, too remote, and unrecognized at law.

(71) The Plaintiff's damages, as claimed, are against an unemployed individual and would put the Defendant out of house and home in a matter where there is no claimed actual damage to the Plaintiff. Such asymmetry in attempted extraction of damages is frivolous, vexatious or an abuse of process; and unrecognized at law.

(72) The Plaintiff claims that half of any punitive damages would be donated to a student scholarship at the University of Ottawa (the Plaintiff's employer), named after a United States personality, without deference to the fact that the Supreme Court of Canada only allowed punitive damages in libel cases as an instrument to provide deterrence against wealthy and powerful societal individuals and corporations.

Request for dismissal

(73) The Defendant asks that the within action be dismissed with costs payable by the Plaintiff to the Defendant on a substantial indemnity basis.

Date: July 22, 2011

Dr. Denis G. Rancourt (B.Sc., M.Sc., Ph.D.)
Former Full Professor (and tenured) at the University of Ottawa
35 Simcoe Street
Ottawa, ON K1S 1A3
Tel: (613) 237-9600

TO:
Richard G. Dearden (LSUC #019087H)
Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

RCP-E 18A (July 1, 2007)

Joanne St. Lewis (Plaintiff) – and – Denis Rancourt (Defendant)

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

STATEMENT OF DEFENCE

Denis Rancourt
35 Simcoe Street
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Tel.: 613-237-9600
(no fax)

Defendant

Fax number of person on whom document is to be served:
613-788-3430 (Richard G. Dearden, LSUC #019087H)

RCP-E 4C (July 1, 2007)

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REPLY

1. The Plaintiff admits paragraphs 14, 23, 25, 48 and 50 of the Statement of Defence (the "Defence") and makes specific replies below to certain paragraphs of the Defence.

2. The Plaintiff has no knowledge of paragraphs 4-12 and 20 of the Defence and makes specific replies below to certain paragraphs of the Defence.

3. The Plaintiff denies all other allegations in the Defence and makes specific replies below to certain paragraphs of the Defence.

4. In reply to paragraph 4 of the Defence, the Plaintiff has not participated in any discussions with any member of the senior Administration of the University of Ottawa regarding any of the Administration's concerns regarding the Defendant. The Plaintiff has had no involvement in the Defendant's loss of tenure and his ongoing labour grievances with the University of Ottawa.

5. In reply to paragraph 15 of the Defence, the Plaintiff admits that the 2008 Student Appeal Centre ("SAC") report is 16 pages.

6. In reply to paragraph 16 of the Defence, the SAC report of 2008 made allegations of systemic racism against the University of Ottawa but failed in its analytical framework to demonstrate that this was indeed the case. Nevertheless, the Plaintiff's November 2008 report considered that this was a sufficiently important allegation in and of itself that it

merited that the University of Ottawa take all necessary steps to work with the SAC to conduct a full and proper analysis of the allegation in the SAC report (this was the first recommendation of the Plaintiff's November 2008 report).

7. In reply to paragraph 17 of the Defence, the Plaintiff has no knowledge of any discussions that may have taken place between University of Ottawa President Allan Rock and any of the senior Administration of the University of Ottawa on November 12, 2011. The Plaintiff denies that she agreed to write a "critical response". The Plaintiff denies that she was asked to or agreed to produce a "counter report" to the SAC's report. The November 2008 report prepared by Professor St. Lewis was an advisory report provided to the University of Ottawa's senior Administration upon its request. The Plaintiff attempted to obtain information from the SAC. The Plaintiff provided the SAC advance notice of the analytical problems in the SAC report and requested that data be provided to her that supported the SAC report. When the SAC expressed concern regarding potential privacy concerns for the student data, the Plaintiff met with SAC to suggest that if her position as a lawyer and then Bencher of the Law Society of Upper Canada was not sufficient in that regard that another lawyer at arm's length from both the SAC, the Plaintiff and the University of Ottawa could be provided with the data. The data could then be stripped of identifiers and a report subject to the SAC's approval could be provided to the Plaintiff so that she could verify the definitions used by the SAC and the SAC's interpretation of the data. There was no response by the SAC to this or any other requests for assistance made by the Plaintiff.

8. In reply to paragraph 18 of the Defence, as of November 16, 2008, the SAC had made it clear that it had no intention of providing any information to the Plaintiff regarding the preparation of the SAC report. The Plaintiff sought to ensure that insofar as she was referring to information provided by Registrar and Vice-President Robert Major that it was accurate. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

9. In reply to paragraphs 19 and 20 of the Defence, the Plaintiff had no knowledge of the conversations which allegedly took place at the Administrative Committee or the Board of Governors nor did she ever have a discussion with anyone on the Administrative Committee or the Board of Governors about the independence of her work. The Plaintiff had the requisite independence given: (a) her position as then Director of the Human Rights Research and Education Centre; (b) her established reputation in the field of human rights; and (c) her position as a fully tenured professor. The Plaintiff acted independently in the preparation and drafting of her November 2008 report. The Defendant's pleas impugning the Plaintiff's independence further aggravate the damages the Defendant has caused to the Plaintiff's reputation and are malicious.

10. Paragraph 19 of the Defence misrepresents President Rock's November 17, 2008 email regarding the Plaintiff's independence in preparing her report. President Rock's email of November 17, 2008 also states:

> "One last point, I would like Robert to be the only point of contact for us with Professor St. Lewis. Although her report is excellent, it may be criticized as not being "independent" from the administration. So far, our dealings with her have been through Robert and have been scrupulously objective. We have simply sought her view, and have imposed no limitations, constraints or conditions. She has been entirely free to say anything she wants. In order to maintain this professional and objective relationship with her, I want Robert to be the only one in communication with her. Robert can simply observe that the first recommendation seems inconsistent with her findings. It will then be up to Professor St. Lewis to decide whether to make a change. If a number of people all send emails and call, we will lose that focus of professionalism and independence."

11. In reply to paragraph 21 of the Defence, the Plaintiff states that when asked to make herself available to comment to the media about her report, the Plaintiff agreed and restricted her statements to the media to the public content of her report. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

12. In reply to paragraph 24 of the Defence, the Plaintiff denies that her November 2008 report constitutes academic fraud. The Defendant's plea in paragraph 24 that "misrepresentation of one's academic research is academic fraud" is malicious, false,

defamatory and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.

13. Paragraph 24 of the Defence misrepresents the Plaintiff's position regarding the SAC report that is reported in the media news article published on November 26, 2008. In addition to the parts of the article quoted in paragraph 24, the November 26, 2008 *Ottawa Citizen* article also reports:

> (i) "But Ms. St. Lewis also recommends that the university assess whether systemic racism plays any part in its process for handling academic fraud. "The fact that the report did not succeed in its methodological attempts does not mean that there is not a problem that should be addressed", she wrote."
>
> (ii) "She [the Plaintiff] concluded her report with 10 recommendations, including that the university and the Student Appeal Centre work together to determine whether systemic racism plays any part in the academic fraud process. "Perhaps even with such a small pool there is something worthy of investigation and analysis," she said. Student Appeals Centre coordinator Mirelle Gervais dismissed Ms. St. Lewis' criticism, saying she stands by the centre's report. It is a typical institutional response to deny the problems we are witness to on a daily basis", she said, adding that the report is not scientific, but based in the Centre's experience meeting with hundreds of individual students. "We are witness to the fact that visible minorities are more likely to run into problems through the appeal process".
>
> Ms. St. Lewis laughed at the suggestion she was not acting independently of the university administration. "This is my area of expertise," she said. "This is what I do… What she (Ms. Gervais) should be actually tackling is not a rhetorical flourish that says I'm not independent; she should be tackling the substance of what I said in the report and rebut the substance".

The Plaintiff states that, as of the date she prepared her report, she had been serving as a Bencher of the Law Society of Upper Canada, the governing body for over 41,000 lawyers in Ontario and was then the Chair of its Equity and Aboriginal Issues Committee. The Plaintiff had been recognized by her peers in the Canadian Association of Black Lawyers for her outstanding contributions to the community and the legal profession. She had also contributed to a number of similar analyses, including providing an independent assessment of the Indigenous Black and Mi'kmaq Program at Dalhousie Law School. In

this context and given her well-established reputation for advocacy, the Plaintiff would not be concerned about acknowledging racism within her own institution if it existed. The Defendant's malicious attack on the Plaintiff's independence further aggravates the damages he has caused to the Plaintiff's personal and professional reputation.

14. In reply to paragraph 26 of the Defence, the Plaintiff denies that her report infringed on the rights of minority students to be protected from discrimination or in any way impeded an institutional response to racism at the University of Ottawa. The Plaintiff's November 2008 report asked the University of Ottawa to cooperate with the SAC to conduct a systemic analysis to identify the scope (if any) of systemic racism in its academic fraud process. The SAC must take responsibility for any aspects of its report that inadvertently stereotyped international students based on its miniscule pool of students relied upon for the findings of the SAC report and in contradiction of the significant number of international students who had no difficulty operating within the academic fraud policy of the University of Ottawa in the submission of their work.

The Plaintiff's November 2008 report did not infringe the rights of minority students to be protected from discrimination. The Plaintiff's November 2008 report did not allow "many egregious high-profile University of Ottawa discrimination cases" to occur in 2011. The Defendant's plea in paragraph 26 contains malicious, false and defamatory statements that aggravate the damages the Defendant has caused to the Plaintiff's reputation.

15. In further reply to paragraph 26, Professor St. Lewis provided an advisory report to the Vice-President Academic (Robert Major) upon the request of the President of the University of Ottawa (Allan Rock). The purpose of the Plaintiff's report was to inform the University of Ottawa about the accuracy or not of the SAC report. To characterize the SAC report as determinant of the scope of the University's obligations to its students in the area of systemic racism would fall far short of the University's obligations under the *Ontario Human Rights Code*. The SAC's analysis, the minuscule pool of students relied upon by the SAC, and the understanding of the actual academic fraud process was inadequate to form such a prescriptive. The Plaintiff's November 2008 report was simply

an analysis of the SAC's report. The Plaintiff does have the requisite expertise to have provided the University of Ottawa with a comprehensive plan to address the issue of systemic racism (including advice on the design of an anti-discrimination policy) but this was not part of the request made of the Plaintiff by President Rock in November 2008.

The SAC report was focused on the practices of the University of Ottawa in the Administration of its student academic fraud processes. No aspect of the SAC report or the analysis by the Plaintiff purported to address possible systemic racism in any other areas of the University's activities and responsibilities. Responsibility for the development of a University-wide anti-discrimination policy rests solely with the senior Administration of the University of Ottawa.

16. In reply to paragraph 27 of the Defence, the Defendant made no attempt to speak to the Plaintiff prior to publishing his blogpost of December 6, 2008. The Defendant's blogpost contains unfounded statements that go much further than the statements of the SAC's report upon which he claims to rely.

17. In reply to paragraph 28 of the Defence, the issues in this action are the Defendant's racist and defamatory statements about the Plaintiff and his personalized racist focus on the Plaintiff in his blogpost of February, 2011 and thereafter.

18. In reply to the statement in paragraph 29 that "the Plaintiff has never denied or attempted to correct the December 17, 2008 blogpost", the Plaintiff states that she has been very deliberate in confining her comments to her publicly available report of November 2008. The Plaintiff has no obligation to acknowledge the Defendant's statements about her November 2008 report or to contribute to his blogpost. It has remained open to the SAC to follow up on the Plaintiff's advisory report to inquire as to the status of the recommendations in the Plaintiff's November 2008 report or to submit additional reports to the University of Ottawa calling for further action. There has been no additional public report by the SAC since its initial report released in November 2008.

19. In reply to paragraphs 31 and 32 of the Defence, the Plaintiff did initially agree to conduct the systemic review that followed from the first recommendation in her

November 2008 report. When it became clear to the Plaintiff that the University would receive no cooperation from the SAC, the Plaintiff declined to undertake the review because it was not possible for her to properly undertake the implementation of the first recommendation in her November 2008 report.

20. In reply to paragraph 32 of the Defence, the Plaintiff denies that the records posted on the Defendant's blog of February 2011 demonstrates any lack of independence on her part. The Plaintiff acted independently in preparing her report. The Defendant's plea in paragraph 32 of the Defence that the Plaintiff lacked independence is malicious and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.

21. In reply to paragraphs 33 and 34 of the Defence, the Plaintiff states that these pleas further aggravate the damages the Defendant has caused to the Plaintiff's reputation. The Plaintiff acted independently from the University of Ottawa's Administration in preparing and drafting her report.

22. In reply to paragraph 35 of the Defence, the Plaintiff admits the Defendant published the February 11, 2011 blog entitled "Did Professor St. Lewis act as Allan Rock's house negro?"

23. In reply to paragraph 36 of the Defence, the Plaintiff states that the Defendant has further aggravated the damages to her reputation by pleading that he "only" made the statements set out in paragraph 36. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff.

24. In reply to paragraph 37 of the Defence, the Plaintiff admits that the Defendant included a link to a videoclip of a Malcolm X speech and denies the remainder of paragraph 37.

25. The Plaintiff denies paragraphs 38 and 39 of the Defence.

26. The Plaintiff denies the meaning of the statement quoted in paragraph 40 of the Defence. Further, the meaning pleaded in paragraph 40 aggravates the damages the Defendant has caused to the Plaintiff's reputation by impugning the Plaintiff's professional ethics as a law professor.

27. The Plaintiff denies paragraph 41 of the Defence. The plea that the Defendant's statements about the Plaintiff are true further aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.

28. In reply to paragraph 42 of the Defence, the Plaintiff states that the defamatory statements published by the Defendant on February 16, 2011 were not "comments" and were not "considered". The plea in paragraph 42 aggravates the damages the Defendant has caused to the Plaintiff's reputation by maintaining that the Plaintiff is a "house negro". The term "house negro" as published by the Defendant about the Plaintiff is racist, subjects the Plaintiff to ridicule and is a malicious attack by the Defendant on the Plaintiff's personal integrity and professional reputation.

29. In reply to paragraph 43 of the Defence, the Plaintiff denies the Defendant's characterization of the May 16th letter written by her counsel. The May 16th letter was clear notice to the Defendant that he maliciously published false, defamatory and racist statements about the Plaintiff that had to be taken down from his blog immediately. Further, the plea in paragraph 42 of the Defence aggravates the damages the Defendant has caused the Plaintiff by pleading that he was wrongly accused of broadcasting racist statements.

30. In reply to paragraph 44 of the Defence, the Plaintiff admits that the Defendant published the May 18, 2011 blogpost entitled "Top Dog Canadian freedom of the press lawyer targets U of O Watch blog". The Plaintiff states the plea in paragraph 44 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation by taking the position that the Plaintiff's claim that he made racist allegations was unwarranted.

31. In reply to paragraph 45 of the Defence, the Plaintiff denies the meaning and explanations pleaded. The Defendant's plea that the statements published in his May 18th blogpost were the "only" two statements relating to the Plaintiff further aggravates the damages he has caused to the Plaintiff's reputation. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff in his May 18th blog.

32. The Plaintiff denies paragraph 46 of the Defence.

33. The Plaintiff admits the Defendant published the May 23, 2011 blogpost entitled "U of O Watch Update: Richard Dearden promises to sue". The Plaintiff denies the last sentence of paragraph 47 of the Defence.

34. In reply to paragraph 49 of the Defence, the Plaintiff admits the Defendant posted the Statement of Claim herein on his U of O Watch blog. The Plaintiff states the Defendant caused further damage to her reputation by posting the Statement of Claim and Statement of Defence herein on his blog so he could generate media reports and on-line communications that disseminated his defamatory statements to a broader audience than the audience that followed his U of O Watch blog.

35. The Plaintiff denies paragraph 51 of the Defence. Further, the Defendant has aggravated the damages he has caused to the Plaintiff's personal and professional reputation by pleading that his defamatory statements are "true and verified" facts. The Defendant refuses to recognize the gravity and seriousness of his false and defamatory statements about the Plaintiff and maliciously maintains that those statements are true.

36. The Plaintiff denies paragraph 52 of the Defence. The Defendant has falsely accused the Plaintiff of an "abuse of process" and being "opportunistic". The Defendant maliciously maintains that his defamatory statements that the Plaintiff acted as a "house negro" were acceptable in Canada and it is the Plaintiff who is misguided. The plea in paragraph 52 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.

37. The Plaintiff denies paragraph 53 and 54 of the Defence.

38. The Plaintiff denies paragraph 55 of the Defence. The plea in paragraph 55 aggravates the damages the Defendant has caused to the Plaintiff's reputation.

39. The Plaintiff denies paragraph 56 of the Defence.

40. The Plaintiff denies paragraph 57 of the Defence. The Plaintiff's report was not a "counter report" of the SAC report. The Defendant's plea in paragraph 57 of the Defence

aggravates the damages he has caused to the Plaintiff by falsely stating that she served "her employer over acting along lines of strict professional ethics and responsibility". The Plaintiff did not breach the Code of Professional Conduct which bound her as a lawyer. She in no way behaved contrary to accepted norms of academic conduct. There was no ethical breach committed by the Plaintiff in any aspect related to her report of November 2008. The plea in paragraph 57 is particularly egregious and damaging to the Plaintiff's professional reputation in that the Plaintiff was a Bencher of the Law Society of Upper Canada at the time she prepared her report.

41. The Plaintiff denies paragraph 58 of the Defence. The plea in paragraph 58 aggravates the damages caused to the Plaintiff's reputation by claiming the statements the Defendant published about her were true and not defamatory. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff. The Defendant refuses to apologize. The Defendant refuses to take down the defamatory publications. The Defendant's malicious conduct warrants substantive awards of punitive damages and aggravated damages.

42. The Plaintiff denies paragraph 59 of the Defence. The defence of fair comment has no application to the defamatory statements published by the Defendant about the Plaintiff. In addition, even if the Defendant could rely on the defence of fair comment, the defence is defeated by the Defendant's malice.

43. The Plaintiff denies paragraph 60 of the Defence. The defence of public interest responsible communication has no application to the defamatory statements published by the Defendant about the Plaintiff. The defence is not available to malicious libel defendants. The publications in issue are totally irresponsible and the antithesis to the type of publications the defence was created to protect.

44. The Plaintiff denies paragraph 63 of the Defence. The plea in paragraph 63 aggravates the Plaintiff's damages by again accusing her of acting improperly or contrary to professional ethics.

45. The Plaintiff denies paragraphs 64, 65 and 66 of the Defence.

46. The Plaintiff denies paragraph 67 of the Defence. This action is a defamation action that also seeks a Court Order requiring the Defendant to take down his false and defamatory publications which he refuses to do, further aggravating the Plaintiff's damages and demonstrating his malice towards the Plaintiff

47. The Plaintiff denies paragraphs 68 to 72. The Defendant's plea in paragraph 70 that "the Plaintiff's damages, as claimed, are against an unemployed individual and would put the Defendant out of house and home" is irrelevant to the issues to be tried in this libel action. Unless and until the Plaintiff obtains judgment against the Defendant and the Plaintiff takes steps to enforce the judgment against the Defendant's assets (such as the residential property he owns), the pleas in paragraph 70 is irrelevant and scandalous.

Dated: August 5, 2011

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Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

REPLY

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Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

question légale est quand est-ce qu'elle aurait pu raisonnablement connaître le blogue? C'est un test objectif et pour montrer ça, je vais montrer que plusieurs personnes, à maintes reprises, ont communiqué avec elle pour lui parler de ce blogue et elle a - elle, elle dit ne jamais avoir - est allé voir le blogue. C'est peut-être vrai, mais la question objectif [*sic*] c'est qu'elle aurait pu raisonnablement le faire et c'est ça la décision légale, d'après la Cour d'appel. Donc, ça, ça va - donc, quand je vais poser des questions par rapport à quand elle a - quand je vais présenter les preuves de toutes les fois où on l'a informé que y'avait ce blogue, mais qu'elle est pas allée voir, c'est pour déterminer cette question-là. Vous voyez? C'est pour ça que je vais faire ça. C'est pour que vous compreniez la logique de la preuve qui va sortir, que je vous dis ça et ensuite, une deuxième défense, c'est la défense que monsieur Dearden a mentionné, qui s'appelle *fair comment*. Alors, cette défense-là, pour réussir, je dois montrer un certain nombre de choses, que le sujet est d'un intérêt public. Ça, normalement, c'est admis dans un cas comme celui-là, une grande institution. On parle de racisme. On parle des étudiants. C'est de l'argent public qui est en jeu. Ça, habituellement, y'a pas de problème.

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Ensuite, que mon opinion que j'ai exprimé, est basée sur des faits réels et c'est pour ça que je dois aller chercher ces faits-là. Je vais être obligé de questionner plusieurs témoins en contre-examination pour leur dire : « Ce courriel, c'est bien vous qui l'avez envoyé? C'est un vrai courriel, n'est-ce pas? » Parce que j'ai besoin des courriels qui montrent les faits réels sur lesquels que, que je connaissais, sur lesquels je base mon opinion. J'ai besoin d'établir ça. Ensuite, la troisième condition, il faut que l'opinion soit reconnue comme étant une opinion, que c'est – ça devrait être reconnu. On voit que c'est une opinion. On voit que je suis pas en train de dire une vérité. On voit que c'est une opinion. Dans mon cas, l'opinion en question, qui est la plus pertinente, c'est – je, je – excusez-moi, c'est.... Mais là, je, je la trouve pas, mais je le paraphrase. C'est que les documents d'accès à l'information suggèrent que la professeure St. Lewis a agi comme – donc, c'est clair que c'est basé sur des faits réels, les documents et que ça suggère. Donc, c'est une opinion et aussi, le titre du blogue montre bien que c'est une opinion. Dans les – dans la loi, des opinions, c'est typiquement quelqu'un a – y'a, y'a, y'a des circonstances en fait et quelqu'un a fait quelque chose et on dit

qu'il est déshonorable ou on dit que il a eu un comportement honteux. Tout ça, c'est des opinions. C'est permis ça. Que ça soit un insulte, c'est pas pertinent. Que ça soit insultant ou perçu comme insultant, c'est pas pertinent. Cette défense-là de *fair comment*, elle est complète, si j'arrive à démontrer ces choses-là, que – ah, oui, y'a un quatrième élément. Est-ce que une personne quelconque pourrait avoir la même opinion? Et la personne peut être biaisée. Ça peut être n'importe qui. Est-ce que, à partir de ces faits qui sont prouvés, une personne quelconque, une personne pourrait honnêtement avoir cette opinion-là, même si elle est biaisée ou pas? Ça, c'est le quatrième élément de la défense *fair comment*. Si ces quatre-là sont satisfaits, c'est une défense. Même si vous, vous avez trouvé que c'est diffamatoire, c'est quand même une défense et donc – et, et, et la chose qui peut ensuite détruire cette défense-là, c'est la malveillance, *malice*. C'est pour ça que y va y avoir beaucoup de, de – d'emphase pour essayer de démontrer que j'ai été malveillant dans cette affaire. Donc, la malveillance peut défaire cette, cette, cette affaire, mais il faut que faire cette, cette, cette affaire, mais il faut que ça soit de la malveillance d'intention. C'est ça la malveillance. D'intention. Il faut, il faut

– et c'est la plaignante qui a le fardeau de la preuve pour prouver la malveillance, d'intention. Okay? Alors, pourquoi est-ce que cette, cette défense existe? C'est très important dans la société que y'a cette défense-là. L'auteur, très célèbre, Salman Rushdie, un gagnant de multiples prix internationaux en littéraire – littérature a dit la chose suivante, il a dit...

INTERPRETER: So, what I'm going to do in this matter, I'm gonna tell you how I'm going to conduct my defence because I want you to understand why I – we want to bring out the evidence. I will have to question the plaintiff and cross-examine the witnesses to establish elements of evidence that I have deemed for my defence. I will explain to you that in this matter, I will advance three defences. We have to advance – we have a right to advance parallel defences. The first defence, or one of the ones that I'm going to advance, is called – that the law in Ontario protects those who communicate because you need to give notice within six weeks, whereas there was none for three months. So, that law is very strict. It is in place. It's strict to protect newspapers, radio, televisions, all those who communicate in that manner with media, and if notice is missed, even for a day, there is no action. So, that obligates individuals to tell us

immediately and the opportunity to reply. So, my first defence is such that the law – that the notice for that article was completely missed and that the action is time barred and Your Honour will – once he sees the evidence that will come out, will decide whether or not if it is time barred in law or not. If he determines it is time barred, he will ask you to forget everything what you first heard about the blog. All the evidence, all the witnesses, that will not factor into your decision. So, it will be quite important and that limitation, it's very important in this action. It - the limitation depends on the premise of when did the plaintiff reasonably have knowledge. She will give evidence as to when she looked at the blog but the legal interpretation is when should she have reasonably been able to know. It's an objective test and to establish that, I will show that several people, on a number of occasions, communicated with her and spoke about the blog. And she says or claims to have never seen – gone to see the blog. Maybe it's true but the objective test is whether or not she could and should have, as per the Court of Appeal. So, when I will ask questions as to when – when I'm going to present the evidence of each time where she was advised that there was this blog and she didn't go, it's to determine that question,

that defence. That's why I'm going to do that. It's for you to understand the logic of the evidence that's going to come out that you understand. The second defence I will advance is that Mr. Dearden mentioned it, fair comment. That defence, to succeed, I have to demonstrate a number of things that the subject is of a public interest. That, normally, would be admitted in this case. A large institution, the discussion is about racism, students. It's public money that's at play. Usually, that would not be an issue. Then, that the opinion that I expressed is based on fact, true facts. And that's why I have to go and get those facts. I will be obligated to question several witnesses in cross-examination to say, this email, you sent it, didn't you? It's a real email? Because I will need the emails that will establish the real facts on which I relied my opinion. And then the third condition is that the opinion be recognized as an opinion. That is, that it should be recognizable that it is an opinion. That I'm not just stating a truth, that I'm expressing an opinion. In my case, the opinion that is the most pertinent is.... I - excuse me, just a moment. Well, now I can't find it but I will paraphrase it. It's that the documents, the set of documents suggest that Professor St. Lewis acted like, so it's

clear, that it's based on real facts, the documents, and it suggests, so it's an opinion. And also the title of the blog also indicate that it's an opinion. In the law, opinions are such that someone – there are circumstances, someone did something and we say that that person is dishonourable or that they had a faulty behaviour. All of that, those are opinions. That's permitted. Whether it's insulting, it's not permanent. Whether it's perceived as such, it's not important. The fair comment defence is complete if I demonstrate – oh, yes, there's a fourth element. Would another individual could have that opinion? It could be anyone. They could be biased. But given the established facts, another individual, could he or she reasonably have that same opinion, whether they're biased or not? That is the fourth element of fair comment defence. If those four criteria are met, it's a successful defence. Even if you found it was defamatory, it's still a fair defence, an acceptable defence. And what can then destroy that defence? It's malice. So, that is why there will be a lot of emphasis to demonstrate malice on my part. So, malice can quash the fair comment defence but it has to be intentional malice. That's malice. There has to be intent and the plaintiff has the burden of evidence to demonstrate

intention and malice. So, why does this defence exist? It's very important in our society, this defence. The author, Salman Rushdie, very famous, winner of many literary awards, said the following...

DENIS RANCOURT: "What is freedom of expression? Without the freedom to offend, it ceases to exist."

DENIS RANCOURT : Ça, c'est Salman Rushdie. C'est la base même de notre société qu'on puisse faire des critiques, même si des gens trouvent ça insultant et même très insultant. Une cause en diffamation, c'est donc une question de société fondamentale parce que ça oppose la liberté d'expression avec quelqu'un qui, qui dit que c'est la réputation peut supprimer l'expression libre. La Cour suprême a eu des choses à dire sur cette valeur de société. Par exemple, la Cour suprême, en 2001, a dit...

INTERPRETER: That was written by Salman Rushdie. That's the basis of our society. That criticism can be made even if others think it's insulting or very insulting. A defamation case is therefore a fundamental case for society. It involves freedom of expression on the one hand, that reputation can suppress freedom of expression. The Supreme Court has had things to say about this societal value. For example, in 2001...

DENIS RANCOURT: "Among the most the

fundamental rights possessed by Canadians...
LE TRIBUNAL : Là, vous n'êtes plus...
DENIS RANCOURT: ...is freedom of expression."
LE TRIBUNAL : ...dans une présentation de votre preuve là. C'est plus une présentation de fin là. Je pense pas que citer la Cour suprême va aider à savoir où est-ce qu'on s'en va là. Je pense que, jusqu'à date, vous allez bien là, mais ne citez pas la Cour d'appel maintenant là. Vous pourrez – si ça vient à des questions, parce que oubliez pas que le droit, je vais le dire qu'est-ce que c'est au...
INTERPRETER: Now, you're no longer in a – an opening. You are more in a closing. I don't think that quoting the Supreme Court will help jurors to know where we're headed. So far, you've been doing okay, but it's not the time to quote the Court of Appeal now because don't forget, that I will also say what the state of the law is.
DENIS RANCOURT : C'est...
LE TRIBUNAL : ...jury plus tard.
INTERPRETER: It's for the jury for later.
DENIS RANCOURT : Je vous – j'avais l'intention de montrer que la Cour suprême avait parlé des, des opinions outrencières, que c'était protégé et des, des opinions qui peuvent être dérangeantes.
INTERPRETER: I intended to show that the

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Supreme Court had spoken about outrageous opinions being protected and opinions that could be disturbing.

LE TRIBUNAL : C'est des arguments que vous pourrez peut-être faire à la fin là, mais pour le moment...

INTERPRETER: Those are arguments, sir, that you might be able to make at the end.

DENIS RANCOURT : D'accord.

INTERPRETER: All right.

DENIS RANCOURT : Donc, le manque d'indépendance dans le rapport, la preuve va démontrer que la personne qui a écrit le rapport en question, la professeure, était employée de l'université. La personne qui a écrit le rapport échangeait des courriels avec ceux qui lui demandaient d'écrire le rapport avant de soumettre son rapport. Recevait des suggestions et la preuve va montrer qu'elle suivait - peut-être pas la preuve va montrer qu'elle admet avoir suivi, mais les changements qui ont été suggérés, on peut les voir dans le texte final, un ou deux de ces changements-là. La preuve va montrer que monsieur Wong, qui travaillait avec l'université à l'époque, un de mes témoins, a envoyé à la plaignante sa critique à lui du rapport étudiant avant qu'elle écrive sa première ébauche et il avait été mis en contact avec la plaignante par Robert Major, le vice-recteur de l'université. Donc, on -

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

MR. DEARDEN: It's an email...
THE COURT: ...neither there or there, so we'll file this as R...
CLERK REGISTRAR: R22.
EXHIBIT NUMBER R22: Letter from Mr. Schmidt - produced and marked.
THE COURT: Okay. And then I received a letter from Mr. Rancourt, which I will read for the record and which will be the next R exhibit. And he states he has a copy to Mr. Dearden and to the Court – the - Ms. Johannson, the coordinator. "Dear Justice Charbonneau, as the court knows, although I have chosen to not attend trial, I have not abandoned my defence. In addition, I intend to be present in every aspect of the litigation as soon as the jury retires to make its verdict. As such, I respectfully hereby expressly ask to retain every right of a party in the litigation." I don't know exactly what that means, but he says, "One", indicating he's asked Mr. Dearden for copies of documents that hasn't been provided, so he asked that I order the plaintiff to provide them, more specifically, submissions and communication with the court. He wants to be notified of any post jury verdict procedures and that I be consulted regarding scheduling. "I request to have a copy of all document correspondence exchanged between the plaintiff and the court during the trial, including draft questions for the jury and facta. And I request a copy of an endorsement that was made today at trial." I assume he's referring to

the decision I made on the - what questions would be put to the jury. Now, in relation to all of that, Mr. Dearden - Mr. Rancourt is obviously, I don't know, he - that's not the proper way to do this. If you want to request things, you can appear. He's obviously - a lot of this documentation is now public in so far and he can get copies of them. That includes my endorsement, copies of the book, if he wants to get some. If it is to - as for post jury verdicts, I assumed he's talking about the other claims and the statement claim, more specifically injunctions and things of that nature. He's obviously being notified everyday what's going on in court. So, if we fix a time for such, he will - the people who are here and who report everything to him can do so. So, this will be...

MR. DEARDEN: So, Your Honour, may I just to go on record? I take major exception to the first line of Mr. Rancourt's email to you of June 2nd sent last night at 6:22 p.m. He says, "As the court knows, although I have chosen to not attend trial, I have not abandoned my defence." I completely disagree with that. He not only abandoned this trial, he abandoned his defence and since he left this courtroom around ten, 10:00 a.m. on May 16th, he's been acting nothing short of contemptuous towards this Court and my client, Professor St. Lewis. So, he has abandoned his defence. There's no doubt about it and like all members of the public, if he wants a copy of any exhibit that's filed after the jury

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden	Counsel for the Plaintiff
D. Rancourt	In Person

and may be used for or against the defendant in these proceedings. You may use the admissions against the defendant but if there is other evidence on the same point, you are at liberty to weigh the whole of the evidence and accept or reject such portions as you see fit on that particular issue. You may also use any part of the read-ins that you conclude support the position of the defendant in coming to your verdict. You must decide case only on evidence heard. I remind you that you are to reach your decision only upon the evidence given by the witness in this courtroom or contained in the exhibits filed during the trial or in excerpts from the transcripts of the examination for discovery that the defendant read during the course of the trial. Things you see or hear in the media or through the Internet are not evidence and you must ignore them. The same thing applies to any rumours that might circulate about this case. There's a good reason for this rule. Media reports and rumours may be entirely unreliable. Neither party has an opportunity to reply to these out of court rumours or accusations, nor can they cross-examine their source or present evidence in reply. Therefore, you cannot pay attention to such things. You must not use the fact that Mr. Rancourt chose to end his participation in the trial for him or against him. As far as you are concerned, for the purpose of your decision, that fact is a totally irrelevant fact. The Court of Appeal

will be in a position to deal with any issues that may arise from Mr. Rancourt's decision to not participate in this trial. This is the proper way to address these issues in Canada. Do not concern yourself with any such issues.

Overview of the case:

In this case, the plaintiff, Joanne St. Lewis, is claiming damages for libel against the defendant, Denis Rancourt, for publishing allegedly defamatory statements on his website, U of O Watch. The statements complained of are set out in the highlighted paragraphs one to eight in Exhibits 3 to 4. In the questions that you will answer, the plaintiff has set out what she submits is the natural and ordinary meaning of the words complained of in each highlighted paragraph one to eight. It is for you to decide if the words complained of have the alleged meanings on the basis of their natural and ordinary meaning, including inferences or insinuations that naturally flow from them. The plaintiff also submits that the words "house Negro" bear extended or special meanings for members of the black community in Canada, so called true or legal innuendoes. Now, the evidence is uncontested that all of the highlighted paragraphs one to eight were published on the U of O Watch website, which is an online blog on which the defendant posts article and comments relating to activities at the University of Ottawa. Mr. Rancourt is the

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

at least one person other than the plaintiff. The plaintiff must prove each of these three elements of a libel action on a balance of probabilities. If you find that the plaintiff has failed to prove one or more of these elements, you must dismiss the case but if you find that all three of these elements are established on a balance of probabilities, falsity and damage are presumed. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. If the plaintiff proves the three required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. If no defence is established, then you will go on to assess the damages payable by the defendant. The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

Okay, let's look at each requirement. The first requirement, the words in highlighted paragraphs one to eight of Exhibits 3 and 4 must be about the plaintiff. Well, it is my role to decide whether the words are capable of being about the plaintiff as a matter of law. I had to take this first decision. Are they capable? But in this case, I have decided that they are capable about - being about the plaintiff but the defendant has specifically admitted that the impugned words were about the plaintiff. So, his admission, by

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

Rancourt.

DENIS RANCOURT : Est-ce qu'on fait la, la...

LE TRIBUNAL : Ah, la question d'exécution d'un jugement potentiel, si y'en a un ou y'en aura pas, c'est pas pertinent à la question pour le jury. Le jury est pas - donc...

INTERPRETER: Are we - the execution of - for potential judgment, it's whether there'll be one or not, it's not pertinent.

DENIS RANCOURT : J'aurais un argument légal, mais je vais le passer.

INTERPRETER: So, I would have a legal argument.

LE TRIBUNAL : Non, continuez.

INTERPRETER: Continue please, sir.

DENIS RANCOURT : Merci. Donc, je vais vous dire ce que je vais faire dans cette action, la façon que je vas mener ma défense parce que je veux que vous compreniez pourquoi on veut faire sortir les preuves qu'on veut faire sortir. Je vais être obligé de questionner la plaignante. Je vais être obligé de contre-examiner les témoins pour établir certains éléments de preuve dont j'ai besoin pour avoir une défense dans cette affaire. Alors, je veux vous expliquer que dans cette action, je vais avoir - je vais avancer trois défenses. On a le droit, comme ça, d'avancer des défenses en parallèle. La première défense que je vais avancer ou une, une défense que je vais avancer, c'est que la

loi en Ontario protège ceux qui communiquent parce que il faut donner la, la notice en dedans de six semaines alors que y'en a pas eu pendant trois mois. Donc, cette loi est très stricte. Elle est - elle est en place pour protéger les journaux, les radios, les télévisions, tous ceux qui communiquent comme ça avec les médias et elle dit si la notice est manquée même de un jour, y'en a pas d'action. Donc, ça oblige les personnes à nous dire tout de suite et ça nous donne la chance de répondre. Alors, ma première défense, si on veut, c'est que la loi est telle que la notice pour cet article-là a été complètement manquée et donc, l'action est barrée, n'est pas permis et c'est Monsieur le juge qui, en voyant les évidences qu'on va faire sortir, va décider si effectivement en loi, c'est barré ou pas. Si il décide que c'est barré, il va vous demander d'oublier tout ce que vous avez entendu à propos de ce blogue, toutes les évidences, tous les témoins. Tout ce qui a rapport à ce blogue ne sera pas dans votre décision. Donc, ça va être très important que - et, et cette limitation dont c'est très important dans cette action. Cette limitation dépend de quand est-ce que la témoin aurait pu raisonnablement savoir que y'avait ce blogue? Elle va - elle va donner des évidences pour dire quand elle a regardé le blogue, mais la

question légale est quand est-ce qu'elle aurait pu raisonnablement connaître le blogue? C'est un test objectif et pour montrer ça, je vais montrer que plusieurs personnes, à maintes reprises, ont communiqué avec elle pour lui parler de ce blogue et elle a - elle, elle dit ne jamais avoir - est allé voir le blogue. C'est peut-être vrai, mais la question objectif [*sic*] c'est qu'elle aurait pu raisonnablement le faire et c'est ça la décision légale, d'après la Cour d'appel. Donc, ça, ça va - donc, quand je vais poser des questions par rapport à quand elle a - quand je vais présenter les preuves de toutes les fois où on l'a informé que y'avait ce blogue, mais qu'elle est pas allée voir, c'est pour déterminer cette question-là. Vous voyez? C'est pour ça que je vais faire ça. C'est pour que vous compreniez la logique de la preuve qui va sortir, que je vous dis ça et ensuite, une deuxième défense, c'est la défense que monsieur Dearden a mentionné, qui s'appelle *fair comment*. Alors, cette défense-là, pour réussir, je dois montrer un certain nombre de choses, que le sujet est d'un intérêt public. Ça, normalement, c'est admis dans un cas comme celui-là, une grande institution. On parle de racisme. On parle des étudiants. C'est de l'argent public qui est en jeu. Ça, habituellement, y'a pas de problème.

Ensuite, que mon opinion que j'ai exprimé, est basée sur des faits réels et c'est pour ça que je dois aller chercher ces faits-là. Je vais être obligé de questionner plusieurs témoins en contre-examination pour leur dire : « Ce courriel, c'est bien vous qui l'avez envoyé? C'est un vrai courriel, n'est-ce pas? » Parce que j'ai besoin des courriels qui montrent les faits réels sur lesquels que, que je connaissais, sur lesquels je base mon opinion. J'ai besoin d'établir ça. Ensuite, la troisième condition, il faut que l'opinion soit reconnue comme étant une opinion, que c'est – ça devrait être reconnu. On voit que c'est une opinion. On voit que je suis pas en train de dire une vérité. On voit que c'est une opinion. Dans mon cas, l'opinion en question, qui est la plus pertinente, c'est – je, je – excusez-moi, c'est.... Mais là, je, je la trouve pas, mais je le paraphrase. C'est que les documents d'accès à l'information suggèrent que la professeure St. Lewis a agi comme – donc, c'est clair que c'est basé sur des faits réels, les documents et que ça suggère. Donc, c'est une opinion et aussi, le titre du blogue montre bien que c'est une opinion. Dans les – dans la loi, des opinions, c'est typiquement quelqu'un a – y'a, y'a, y'a des circonstances en fait et quelqu'un a fait quelque chose et on dit

qu'il est déshonorable ou on dit que il a eu un comportement honteux. Tout ça, c'est des opinions. C'est permis ça. Que ça soit un insulte, c'est pas pertinent. Que ça soit insultant ou perçu comme insultant, c'est pas pertinent. Cette défense-là de *fair comment*, elle est complète, si j'arrive à démontrer ces choses-là, que – ah, oui, y'a un quatrième élément. Est-ce que une personne quelconque pourrait avoir la même opinion? Et la personne peut être biaisée. Ça peut être n'importe qui. Est-ce que, à partir de ces faits qui sont prouvés, une personne quelconque, une personne pourrait honnêtement avoir cette opinion-là, même si elle est biaisée ou pas? Ça, c'est le quatrième élément de la défense *fair comment*. Si ces quatre-là sont satisfaits, c'est une défense. Même si vous, vous avez trouvé que c'est diffamatoire, c'est quand même une défense et donc – et, et, et la chose qui peut ensuite détruire cette défense-là, c'est la malveillance, *malice*. C'est pour ça que y va y avoir beaucoup de, de – d'emphase pour essayer de démontrer que j'ai été malveillant dans cette affaire. Donc, la malveillance peut défaire cette, cette, cette affaire, mais il faut que faire cette, cette, cette affaire, mais il faut que ça soit de la malveillance d'intention. C'est ça la malveillance. D'intention. Il faut, il faut

– et c'est la plaignante qui a le fardeau de la preuve pour prouver la malveillance, d'intention. Okay? Alors, pourquoi est-ce que cette, cette défense existe? C'est très important dans la société que y'a cette défense-là. L'auteur, très célèbre, Salman Rushdie, un gagnant de multiples prix internationaux en littéraire – littérature a dit la chose suivante, il a dit...

INTERPRETER: So, what I'm going to do in this matter, I'm gonna tell you how I'm going to conduct my defence because I want you to understand why I – we want to bring out the evidence. I will have to question the plaintiff and cross-examine the witnesses to establish elements of evidence that I have deemed for my defence. I will explain to you that in this matter, I will advance three defences. We have to advance – we have a right to advance parallel defences. The first defence, or one of the ones that I'm going to advance, is called – that the law in Ontario protects those who communicate because you need to give notice within six weeks, whereas there was none for three months. So, that law is very strict. It is in place. It's strict to protect newspapers, radio, televisions, all those who communicate in that manner with media, and if notice is missed, even for a day, there is no action. So, that obligates individuals to tell us

immediately and the opportunity to reply. So, my first defence is such that the law – that the notice for that article was completely missed and that the action is time barred and Your Honour will – once he sees the evidence that will come out, will decide whether or not if it is time barred in law or not. If he determines it is time barred, he will ask you to forget everything what you first heard about the blog. All the evidence, all the witnesses, that will not factor into your decision. So, it will be quite important and that limitation, it's very important in this action. It - the limitation depends on the premise of when did the plaintiff reasonably have knowledge. She will give evidence as to when she looked at the blog but the legal interpretation is when should she have reasonably been able to know. It's an objective test and to establish that, I will show that several people, on a number of occasions, communicated with her and spoke about the blog. And she says or claims to have never seen – gone to see the blog. Maybe it's true but the objective test is whether or not she could and should have, as per the Court of Appeal. So, when I will ask questions as to when – when I'm going to present the evidence of each time where she was advised that there was this blog and she didn't go, it's to determine that question,

that defence. That's why I'm going to do that. It's for you to understand the logic of the evidence that's going to come out that you understand. The second defence I will advance is that Mr. Dearden mentioned it, fair comment. That defence, to succeed, I have to demonstrate a number of things that the subject is of a public interest. That, normally, would be admitted in this case. A large institution, the discussion is about racism, students. It's public money that's at play. Usually, that would not be an issue. Then, that the opinion that I expressed is based on fact, true facts. And that's why I have to go and get those facts. I will be obligated to question several witnesses in cross-examination to say, this email, you sent it, didn't you? It's a real email? Because I will need the emails that will establish the real facts on which I relied my opinion. And then the third condition is that the opinion be recognized as an opinion. That is, that it should be recognizable that it is an opinion. That I'm not just stating a truth, that I'm expressing an opinion. In my case, the opinion that is the most pertinent is.... I - excuse me, just a moment. Well, now I can't find it but I will paraphrase it. It's that the documents, the set of documents suggest that Professor St. Lewis acted like, so it's

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

CLERK REGISTRAR: Correct, Mr. Dearden.
EXHIBIT NUMBER R23: Email from Mr. Rancourt - produced and marked.
CLERK REGISTRAR: All rise.
...JURY ENTERS (10:16 a.m.)
CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.
THE COURT: Good morning. The registrar will hand out the copies of my charge and as I go over it with you, you can read it and.... All right.

C H A R G E T O T H E J U R Y

CHARBONNEAU, J. (Orally):
So, members of the jury, as I told you at the beginning of this trial, I propose at this time to instruct you on the law and to show you how to apply the law to the facts as you find them. So, that you may be better able to follow my charge, I will divide it into the following parts. Part one, some general principles of law that apply to all civil jury cases; part two, overview of the case; part three, a review of the law of defamation and the evidence relevant to the questions you will have to answer; part four, the questions and part five, final instructions.

Respective duties of judge and jury:
It is my duty to instruct you on the law that applies to this case and you must follow the law as I state it to you. You must discard any notions or opinions of your own about the law or

the views which counsel may have expressed about the law, insofar as those views contradict what I say to you concerning the law applicable to this case. There is a simple reason for this. All my decisions on the law, whether as part of my charge to you or on any issues of law, which I decided in your absence, are fully recorded and available to the Court of Appeal for review. If I am wrong on a point of law, the Court of Appeal will not hesitate to correct me. On the other hand, if you decide not to follow my directives on the law, there will be no record of this and no way for either party to seek relief from the Court of Appeal. While I am the judge so far as the law, you have the sole and exclusive authority to determine the facts. As jurors, it is your exclusive duty to decide all questions of facts submitted to you and for that purpose, to determine the effect and value of the evidence.

Charge to be considered as a whole:
Please consider my instructions as a whole. Do not attach any undue weight to a certain sentence or individual part and ignore the rest. After I have concluded my charge and you have retired to consider your verdict, it is the practice of the Court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept their submissions and recall you after you have commenced your deliberations, there is always a danger of you placing undue emphasis on what I may say on your recall. I

must - you must not do that. You will consider what I might say then with what I'm saying now as one complete instruction.

How should jurors approach their task?
When you retire to your jury room, I would ask you to first select a foreperson. He or she will act as a chairperson to preside over your discussions, which may be examined in an orderly way. Ultimately, your foreperson will announce to the Court the verdict you have arrived at. The attitude and conduct of the jurors at the outset of their deliberations are of the greatest importance. I suggest that you avoid expressing too definite an opinion in the early stages of your deliberations. If you listen calmly to the arguments of your fellow jurors and put forward your own views in a calm and reasonable way, you will be able to arrive at a just and proper verdict. In dealing with this case, I would ask that you deal with it in the same manner as you would expect an honest and partial judge to decide it. You must set aside all feelings of sympathy, prejudice or passion. The law is no respecter of persons. Justice must be administered fairly and impartially.

Burden of proof:
During the course of this charge, I will be referring to the burden of proof, which is what a party must prove to succeed in his action or defence. In this case, your verdict will be

given in the form of answers to certain questions, which I will review with you in some detail later or you give a general verdict. When I discuss these questions with you, I will indicate on whom the burden of proof lays in respect of each question. When I say that a party has the burden of proof of satisfying you of a proposition or issue, this means that the party must prove the proposition or issue by a preponderance of evidence. The term "preponderance of evidence" means such evidence, as when considered and compared with that opposed to it, persuades you on the balance of probability. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who has the burden of proving it. In a criminal trial, the guilt of an accused must be proven beyond a reasonable doubt. That heavy burden does not exist in civil proceedings such as these. It is only necessary, in this type of action, for the party who has the burden to establish a proposition or issue by a preponderance of evidence. If you can say in respect of a particular issue, we think it more probable than not, then the burden of proof has been met. Now, it is very important for you to bear in mind that in determining whether an issue or proposition has been proven by a preponderance of evidence or on the balance of probabilities, you should consider all of the evidence bearing

upon the issue. In this case, as a result of Mr. Rancourt's decision not to participate in the trial, you have not heard any evidence or submissions contrary to the position of the plaintiff. However, the plaintiff still has to convince you on a balance of probabilities of each element she is required to prove to succeed in this action.

How to weigh testimony:
In weighing the testimony of witnesses, you are not obliged to decide an issue in conformity with the majority of the witnesses. You can, if you see fit, believe one witness against many. The test is not in the relative number of witnesses but in the relative force or strength of the testimony of the witnesses and with respect to the testimony of any witness, you can believe all that that witness has said, part of it, or you may reject it entirely. In determining the credit to be given to the evidence of a witness, you should use your common sense and your knowledge of human nature.

Judge's comments on the evidence:
Under our system of law, the judge has the right to comment upon the evidence of witnesses, their credibility or the inferences to be drawn from the evidence. If I do so, I want to emphasize that you are in no way bound to follow my opinion so far as the facts are concerned. It is your duty to place your own interpretation on the

evidence and if your views are at variance with mine or if you disagree with my comments, you not only may, but it is your duty to disregard my views or opinions in the facts and to give effect to your own. As I said, you are the sole judges of the facts, not I.

Inferences:
Now, evidence may be either direct or circumstantial. It is direct evidence if it proves the facts without an inference, which in itself, if true, conclusively establishes that fact. The circumstantial evidence, if it proves a fact from which an inference of the existence of another fact may be drawn. In considering the evidence, you have the right to draw all reasonable inferences and I instruct you that any fact proven by reasonable inference from the evidence is just as well proven as facts established by direct evidence. However, inferences must be based on evidence and not on mere conjecture or speculation.

Admissions:
In this trial, certain facts were admitted by the defendant. These admissions were made by the defendant in response to a request to admit, served by the plaintiff on the defendant during the discovery process. Now, these admissions are contained in Exhibit 30. As a result of these admissions, you must accept these facts as proof.

They are conclusive for the purposes of this trial.

Expert evidence:

I'm now going to tell you how you should go about examining and applying the expert evidence you heard in this case. In this trial, Camille Nelson, the Dean of Suffolk University Law School, gave evidence as an expert witness. She was qualified to give expert evidence because of her special skill, training and knowledge in the fields of the history of racism, the language of racism and generally, the experiences of the individuals of the black community and racism. Now, normally, witnesses are limited in the opinions they may give. Their opinions must be based on personal experience or observation. However, in the case of an expert witness, the rule is not quite so strict. Expert witnesses are witnesses who are particularly qualified to help you understand issues beyond our common knowledge or experience and they are allowed to state opinions about the facts in their area of expertise. Therefore, Dean Nelson was allowed to give her opinion on the special meaning the words "house Negro" have in the black community in Canada. It is up to you to decide how much weight you will give to an expert opinion. You do not have to accept the testimony or the opinion of an expert witness. The only reason an expert is allowed to give an opinion is to help you decide the issue of whether "house Negro" has

a special meaning for black people in Canada, which may be beyond the knowledge of the ordinary citizen. This extended meaning is known as true innuendo and must be proved by specific evidence. You should carefully consider the testimony and opinion of an expert witness just like you should carefully consider the evidence of any other witness. You should consider the qualification of the expert; examine Dean Nelson's training and experience and consider the level of her competence in the field. I would also suggest that you ask yourselves whether the expert was impartial or whether she appeared unreasonably to favour the party who called her as a witness. If you are satisfied with the qualification and impartiality of Dean Nelson and find that the evidence supports the assumption used by the expert, you should not reject Dean Nelson's opinion without good reason. If however, you are of the view, on a consideration of all of the evidence in this case, that the opinion of Dean Nelson should not be accepted by you, you are at liberty to reject it.

Read-ins:

During the trial, counsel for the plaintiff read to you certain excerpts from the transcripts of the examination for discovery of the defendant. I will now tell you what use you can make of that evidence. Those portions of the discovery of the defendant, read to you by counsel for the plaintiff, constitute admissions by the defendant

and may be used for or against the defendant in these proceedings. You may use the admissions against the defendant but if there is other evidence on the same point, you are at liberty to weigh the whole of the evidence and accept or reject such portions as you see fit on that particular issue. You may also use any part of the read-ins that you conclude support the position of the defendant in coming to your verdict. You must decide case only on evidence heard. I remind you that you are to reach your decision only upon the evidence given by the witness in this courtroom or contained in the exhibits filed during the trial or in excerpts from the transcripts of the examination for discovery that the defendant read during the course of the trial. Things you see or hear in the media or through the Internet are not evidence and you must ignore them. The same thing applies to any rumours that might circulate about this case. There's a good reason for this rule. Media reports and rumours may be entirely unreliable. Neither party has an opportunity to reply to these out of court rumours or accusations, nor can they cross-examine their source or present evidence in reply. Therefore, you cannot pay attention to such things. You must not use the fact that Mr. Rancourt chose to end his participation in the trial for him or against him. As far as you are concerned, for the purpose of your decision, that fact is a totally irrelevant fact. The Court of Appeal

will be in a position to deal with any issues that may arise from Mr. Rancourt's decision to not participate in this trial. This is the proper way to address these issues in Canada. Do not concern yourself with any such issues.

Overview of the case:

In this case, the plaintiff, Joanne St. Lewis, is claiming damages for libel against the defendant, Denis Rancourt, for publishing allegedly defamatory statements on his website, U of O Watch. The statements complained of are set out in the highlighted paragraphs one to eight in Exhibits 3 to 4. In the questions that you will answer, the plaintiff has set out what she submits is the natural and ordinary meaning of the words complained of in each highlighted paragraph one to eight. It is for you to decide if the words complained of have the alleged meanings on the basis of their natural and ordinary meaning, including inferences or insinuations that naturally flow from them. The plaintiff also submits that the words "house Negro" bear extended or special meanings for members of the black community in Canada, so called true or legal innuendoes. Now, the evidence is uncontested that all of the highlighted paragraphs one to eight were published on the U of O Watch website, which is an online blog on which the defendant posts article and comments relating to activities at the University of Ottawa. Mr. Rancourt is the

moderator and administration of the website. He has admitted that he published the words complained of and that those words were about the plaintiff, Joanne St. Lewis. Mr. Rancourt is a former professor of physics at the University of Ottawa. He was dismissed by the university in 2009. Whether the university had or did not have just cause to dismiss Mr. Rancourt is not relevant to these proceedings. In addition, the fact that the University of Ottawa agreed to pay for Professor St. Lewis' lawyer's fees is irrelevant to the issues you have to decide. The defendant previously argued that this was an abuse of process but the courts have dismissed his allegations and ruled there was no improper motive on the part of the University of Ottawa agreeing to pay the legal costs of one of its employees. The plaintiff, Joanne St. Lewis, has been a tenured professor at the Faculty of Law at the University of Ottawa since the year 2001. She was the only black woman in her law class when she graduated in 1983. She was the only black woman amongst the persons called to the Ontario Bar in 1997. She was a bencher of the Law Society of Upper Canada from 2001 to 2009. As part of her duties as bencher, she sat as a judge on the disciplinary panels. She obtained many awards for her work in the field of human rights generally and in relation to the promotion of justice for the black community. At the relevant time, she was the Director of the University of Ottawa Centre for Human Rights

Research and Education. She was asked by the university's administration committee to review an annual report published by the Student Appeal Centre alleging unfairness and systemic racism in university's academic fraud process. Professor St. Lewis prepared an evaluation report expressing negative views about the unprofessional tone of the SAC report and the methodology used by the SAC to reach its conclusions. Professor St. Lewis made 10 recommendation to the university to improve the procedural aspects of the process and a recommendation that the university conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process. So, that's the setting. That's the background of this case.

The legal issues and the evidence relating to them:

Now, the first matter is the plaintiff must prove on a balance of probabilities defamation, that the words defame her. So, the requirements of defamation in law are as follows: the plaintiff, in a defamation action, is required to prove three things: one, that the words used by the defendant were about the plaintiff; two, that the words used by the defendant were defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person and three, that the words were published, meaning that they were communicated to

at least one person other than the plaintiff. The plaintiff must prove each of these three elements of a libel action on a balance of probabilities. If you find that the plaintiff has failed to prove one or more of these elements, you must dismiss the case but if you find that all three of these elements are established on a balance of probabilities, falsity and damage are presumed. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. If the plaintiff proves the three required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. If no defence is established, then you will go on to assess the damages payable by the defendant. The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

Okay, let's look at each requirement. The first requirement, the words in highlighted paragraphs one to eight of Exhibits 3 and 4 must be about the plaintiff. Well, it is my role to decide whether the words are capable of being about the plaintiff as a matter of law. I had to take this first decision. Are they capable? But in this case, I have decided that they are capable about - being about the plaintiff but the defendant has specifically admitted that the impugned words were about the plaintiff. So, his admission, by

itself, is conclusive of this issue and therefore, you are not asked to answer any question about this element. The admission becomes the proof that was required. Second requirement, the words in highlighted paragraphs one to eight of Exhibit 3 and 4 must be defamatory. So, on the issue of defamation, this is the central issue that you have to decide in this trial. The plaintiff must prove that the words in highlighted paragraphs one to eight were defamatory. That means that they would tend to lower the plaintiff's reputation in the estimation of right thinking members of the community. It is my role to decide whether the words highlighted in paragraph one to eight are capable of being defamatory as a matter of law. I have decided that each statement set out in the book of questions for the jury at Tab A are capable of being defamatory. It is now your role to decide whether those words are, in fact, defamatory. Although I have said that as a matter of law the words in highlighted paragraphs one to eight of Exhibit Number 3 and 4 are capable of being defamatory, that does not mean they are actually defamatory. It is your role to decide whether the words did or did not actually defame the plaintiff.

Natural and ordinary meaning, also called false innuendos:

In deciding whether the words are defamatory or not, you should consider the articles or the

posts there, as a whole. You should decide whether or not the words would discredit the plaintiff or might tend to lower the plaintiff's reputation in the estimation of reasonable members of society, generally, or expose the plaintiff to hatred, contempt or ridicule. It does not matter what the defendant would say those words mean nor does it matter what the plaintiff says those words mean. It matters what reasonable men and women, hearing those words, would think and understand. You must consider any natural and ordinary meaning arising from the words as well as any innuendo or insinuations that may be drawn or inferred from them, so called false innuendos. Ask yourself what meaning a reasonable person would give to the statement in question and consider the context in which it was made. A reasonable member of society is an ordinary fair person who is reasonably thoughtful and informed rather than someone who is overly fragile and has an overly fragile sensibility. So, I encourage you to use your common sense.

Legal innuendoes:

The plaintiff has set out in her pleadings a number of extended meanings or true innuendoes, which she wants you to find would be understood by members of the black community in Canada when reading the words "house Negro". Now, those are found at Tab B of the book of questions for the jury. It is a question for you to decide whether

in fact they bear those extended or special meanings. The plaintiff has the burden of proving that extended or special meanings. In order for you to decide whether the plaintiff has satisfied her burden, you will have to consider the expert evidence of the dean of Suffolk Law School, Camille Nelson. You should consider each highlighted paragraph one to eight in Exhibits Number 3 and 4 in the context in which it was written when you get into the jury room. You should consider each article as a whole when determining whether it is defamatory. You should read each paragraph again and satisfy yourselves whether or not the words in the highlighted paragraphs one to eight would discredit the plaintiff in the eyes of reasonable men or women reading that article for the first time. What would reasonable men and women in the community, reading the two articles, understand each statement in Tab A to mean? What would a member of the black community in Canada understand each statement in Tab B to mean, in relation to house Negro? Now, the onus is on the plaintiff to satisfy you on a balance of probabilities that the words in their natural and ordinary meaning or by legal innuendo are defamatory of her. If she succeeds in establishing that the words in their natural ordinary meaning or by legal innuendo are defamatory, then that is sufficient.

Now, obviously, I will very briefly review with you the evidence. It hasn't been a very long

case and Mr. Dearden has reviewed with you extensively the evidence but on this, in determining what you will have to look at, let me point out some of the evidence. Now, your starting point obviously are the words themselves and as I indicate, and you'll have to read them carefully as a whole, but you have to look at them in the context in which they were written. Now, the context is what the defendant is addressing in his blog, how he says it, what message he's conveying about the plaintiff's report and it's the - you should consider the evidence of the plaintiff herself in relation to her report and the evidence of Mr. Rock and Mr. Major in relation to what exactly the plaintiff was asked to do. You should consider her report, keeping in mind her mandate was to evaluate the SAC report, and also her conclusions in her evaluation. And in that context, you then examine carefully the words that are published by Mr. Rancourt and then you ask yourself the following question: what would reasonable men and women reading these words think or understand? Would those words tend to discredit the plaintiff or tend to lower her and her reputation in the estimation of members of society generally or possibly expose her to hatred, contempt or ridicule? You will need to consider the evidence of the plaintiff and various witnesses as to who the plaintiff is. In other words, her standing in the community or position in the community, the position she

occupied, her profession as a lawyer, as a law professor and her long-time work in the field of human rights and anti-racism. So, you have to look at that and consider that evidence and see if you find that that is so, that you accept that because obviously, her professional life, her reputation and so on, will have great bearing if you find that she had this position on whether these words, that's another context of how these words will likely affect her and defame her and lower her as a professional in that field, as a lawyer, as a law professor, as someone who puts herself out as being - trying to deal with the racism and problems relating to racism. There's evidence that you'll have to consider that come from the plaintiff, also from documentary evidence that she is a woman who has built a tremendous reputation as an advocate against racism. So, that evidence, you have to consider. You have to weigh that and consider that and there's evidence that she received many awards and been sought by different organizations for competence, integrity and expertise and she was a leader of the bar, having been elected bencher on many occasion. This is important evidence. You have to weigh that evidence, consider that evidence, because if you find that that is the case, this is something that helps you understand whether or not the words defame her as in relation to that reputation she has built and as to her professional life in relation to how what defamation is as I explained it to you just

before. Now, in relation to the alleged legal innuendoes, I won't go and tell you much more on this, but the - you have to look at - it's the evidence of mainly – it's the evidence of Dean Nelson and I would encourage you to look carefully at Exhibit 10, which is her report and her conclusion as an expert after you have reviewed whether you're satisfied with her competence in the field, expertise and her impartiality. You have to determine whether you're satisfied and you accept that opinion that the word "house Negro" has the special or extended meaning for members of the black community. And you will recall, I don't need to recall, but her conclusions are clear that we're talking of an extended meaning, which is being a traitor to their race, to be - to have simply abandoned the black community and so on. So, I'll leave that with you and put – that's the evidence you have to examine on those matters.

Now, let's talk about damages. Oh, I'm sorry, let's go to the third requirement first, then deal with the third requirement. The third requirement are that the words were published to at least one person. Now, again, the words complained of in the highlighted paragraphs one to eight of Exhibits 3 and 4 must have been communicated to at least one person. In law, that is to say they were published. Now, the defendant has admitted publishing all the

included words on his U of O Watch website. The admission is conclusive of this issue.

Now, let's turn to damages.

Damages:

In all libel cases, there is a presumption in favour of the plaintiff that she has suffered damages. Once the plaintiff proves that the defendant published the statement about her and can show that the words are capable of bearing a defamatory meaning, there is no need to go further and prove damages. In libel law, malice, the falsity of the words and damages are presumed. In libel actions, damages are at large. That is, they are not limited to a pecuniary loss, which can be specifically proved. An individual plaintiff is entitled to compensatory or general damages for both, a) the injury sustained as a result of the lessening of the esteem in which she is held in the eyes of the community because of the defamatory statements and, b) the injury, which the defamatory statement caused to her feelings. When assessing what would be appropriate as compensation, you should take into account any mitigating or aggravating factors. You're entitled to consider the conduct of the defendant, his conduct of the case and his state of mind in determining whether the damages had been aggravated. If the plaintiff can satisfy you that the defendant was actuated by malice in publishing the defamatory words, this finding of

malice will entitle you to consider an award of aggravated damages. Malice will be established if it can be shown that the defendant was motivated by spite or ill will or some other improper purpose. You are required to arrive at an amount by way of compensatory or general damages, which would include amounts awarded for vindication of reputation and injured feelings. You will have to assess the amount of damages against the defendant and will have to assess the conduct of the defendant and determine if his conduct has aggravated the damages. The assessment of damage is for you to decide.

Now, nominal damages:
Nominal damages are awarded if you conclude that the action was properly brought, but the plaintiff has suffered no particular or special damage, or where the plaintiff has cleared her character as a result of this trial and no substantial damage has been suffered by the plaintiff. In such circumstances, it would be appropriate to award a small amount by way of damages. My review of the evidence leads me to the conclusion that this is not a case where nominal damages would be adequate. It is, however, for you to decide.

General damages:
General damages are awarded where you endeavour, as representatives of the community, to arrive at a figure, which will fairly compensate the

plaintiff for the injury, which she, in fact, suffered. In assessing the damages, you should, as nearly as possible, award that sum of money, which will compensate the plaintiff for the injury she has suffered. A perfect compensation or exact mathematical compensation is not possible and would be unjust. You must therefore bring your reasonable common sense to bear - I think there's a missing clause there. What you must do - and I think there's a missing sentence there, but what you must do is that you must bring - you have to use your common sense and say, "What is the award will be fair to all parties?" Fair, both for the plaintiff and the defendant. Now, you should remember that this is the only occasion on which an award of damages can be given. Under our law, the plaintiff must sue, in this action, for all her loss and no subsequent action may be brought to increase or decrease the awards made by you. That's it. One time. You should strive to fix an amount of money that will reasonably and fairly compensate the plaintiff for the damages, which she has suffered. The amount of that should be - the amount of the award should be reasonable, not extravagant or oppressive and your aim is - should be to reach a fair balance, neither too much, nor too little. In assessing these damages, you are entitled to take into consideration the conduct of the plaintiff, her position and standing in the community, the nature and seriousness of the libel, the mode and

extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant from the time when the libel was published down to the very moment of your verdict. You should also allow for the sad truth that no apology or retraction or withdrawal, at this stage, can ever be guaranteed to completely undo the harm that is done or the hurt it has caused.

Now, let's review briefly the evidence that you should be looking at. Again, I'll just go over it very quickly, because certainly Mr. Dearden has very extensively reviewed all of the elements, which may - which should be taken into account. Now, so the question is how to determine an amount that will reasonably and fairly compensate the plaintiff for the damages that she has suffered? Well, to do that, I would suggest that you consider the following evidence. Obviously, again, you have to look at all of the evidence relating to her position and standing in the community and her professional life. And I reviewed that with you. The impact it has on her professional life and on her personal life, but certainly, as a - as I say, because of her standing as an expert and a person who has been working in this area and has acquired this reputation of impartiality and of competence and of integrity, that's something you have to look at to determine the amount of compensation. You should look at her conduct and by that, I mean

you should look at the - all the evidence surrounding the mandate she received and how she did it in relation to the evidence that she had nothing to do with the defendant's dismissal and that she did her work consciously and dependently and complete - and competently. You should look at her evidence, at the evidence of President Rock and of the Vice-President Major and her evidence, at one point, where she mentioned that she feels that she was seeking collateral damage in all of this and it is my own view that there's a very good conclusion that that was the case. And - but it's for you to decide and you look, naturally, on the impact on her. I've already talked about the evidence, you look at - was there a impact on her professional life? Well, you know about the fact that she had to reduce her work, her administrator work for the - she had to - the number of students now that are involved and so on and so forth and how it can impact her in relation to her various mandates that she gets and that she carries out with other organizations and so on but also, the impact on her emotionally, you'll have to review that and it has been done by Mr. Dearden, but you have to review her evidence, how it impacted her emotionally, physically, and how it affected her health. You have the therapist testified that she had to provide her services, her medical leave and so on. And obviously, you will find on an emotional and physical impact on her, you'll have to look carefully at the evidence of Dean

Feldthusen and Professor Currie, her mother and her friend, Jacqueline Beckles and Denis Laberge, which all talk about the impact it had on her. So please, consider all of that carefully and decide what evidence you're accepting and what facts you can draw from that evidence and you certainly can look at the length and the repetition of the defamatory publication. There is evidence for you to consider that it started and it continued relentlessly for many - and it – for months after months since the beginning and that it came from different sources, which were prompted by the defendant. So, if you accept that evidence, if you weigh that evidence and that will - these are - this is important evidence for you to consider in determining compensation, what is fair, reasonable in the circumstances because of that.

Now, in relation to – let's turn now to aggravated damages because you may, if you come up to an amount of aggravated - of general damages, you've decided what's a fair compensation, you'll then have to decide whether this is a proper case to award aggravated damages. Aggravated damages - now, on page 21, are awarded to compensate a plaintiff with an extra measure of damages. Aggravated damages are only justified if the defendant was motivated by actual malice, which increase the injury to the plaintiff either by spreading further afield the damage to the reputation of the plaintiff or by

increasing the mental distress and humiliation of the plaintiff. These are a restricted head of damages and take into account increased mental distress, humiliation, anxiety suffered by a plaintiff as a result of the malicious conduct of the defendant but they are compensatory in nature. The factors you can consider in determining whether aggravated damages should be awarded overlap, to some extent, with the factors relevant to general damages. The conduct of the defendant, before and after the publication of the defamatory statements, his conduct of the case and his state of mind, are all matters, which the plaintiff may rely on as aggravating her damages. Aggravated damages may be awarded where the defendant's conduct has been high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the defamatory statements. Another factor to consider is the defendant's failure to apologize for or retract the defamatory statements and whether the defendant repeated or republished the libel. In order for you to award aggravated damages, the plaintiffs [*sic*] must convince you on a balance of probabilities that the defendant acted with actual malice. Now – so, she has this onus. So, the question will be did the - was the defendant actuated by actual malice? The definition of actual malice can be summarized as follows: the defendant is actuated by actual malice if he or she publishes a defamatory statement, knowing it was false or with reckless

indifference to whether it is true or false or for the dominant purpose of injuring the plaintiff because of spite or animosity or for some other dominant purpose, which is improper or indirect. Evidence of actual malice may be extrinsic or intrinsic. Malice may be inferred from the language used in the defamatory statements. Now, actual malice is to be distinguished from malice in law, which is presumed to be present upon proof of the publication of a defamatory statement. Stated another way, actual malice includes, but is not confined to its popular meaning of making a statement for dominant purpose of harming someone because of personal spite or ill will. Actual malice includes every unxious defiable dominant intent to inflict injury on the person defamed. Actual malice also includes acting out of some other dominant improper motive such as anger. You need not find what the wrong motive was, provided you decide there was such a motive. Now, if a person publishes a defamatory statement that he or she knows is untrue, that's evidence of actual malice. If a person publishes a statement recklessly with indifference to whether it is true or false, that also constitutes actual malice. An honest belief in the truth of the statement will, in general, be conclusive evidence that the defendant acted without malice. He may not have acted reasonably, provided he acted honestly. Knowledge that the statement was false, on the other hand, would generally be

conclusive evidence that the defendant was actuated by actual malice. Failure of a defendant to make inquiries as to - as it was reasonable for him in the circumstances to conduct before he published a statement, may be evidence of actual malice. It may be due to neglect, lack of inquiry, that is, an indifference as to whether the statement was true or false or it may be due to prejudice or bias on the part of defendant and such prejudice will be evidence of actual malice. If a person, through anger or some other dominant wrong motive, has allowed his mind to get into such a state as to make and pass aspersions on other people, regardless of whether they are true or false, it has been held that a jury is justified in finding that he or she has abused the occasion and can constitute actual malice. So, was the defendant's mind in such a state that he recklessly disregarded whether he published - what he published was true or false? Now, that would be evidence of malice. You can find actual malice if there is any dominant improper motive or dominant improper attitude of mind, which affects what was published. The defendant's conduct, prior to and during this trial, may afford evidence of actual malice. Additional factors to consider as to whether the defendant was motivated by actual malice are the omission of significant information that contradicted the defendant's thesis of the story, reporting only one side of the story, failure to provide the

plaintiff with a fair opportunity to defend against the defamatory statements or a repetition of the defamatory statements. All these factors can be considered by you, in determining whether there's actual malice on the part of the defendant.

I will say very little on the evidence. You've heard the evidence. There is evidence, no apology, evidence of republication many, many times; evidence of not allowing the plaintiff, not to provide a opportunity to defend and so on and so forth. You have to consider that evidence. You have to decide whether the evidence, that you accept that evidence and if, after reviewing all of that evidence, which was reviewed with you with Mr. Dearden, he submits that evidence to you, you analyze that evidence, you decide whether you come to the conclusion that the defendant was motivated by this actual malice and you decide and you look at this and determine whether the evidence then satisfies you that there is a need for an increased amount because there has been increased injury because all of that to the plaintiff, increased damages to the plaintiff, which requires a - over and above what would be a fair compensation for general - that you have decided for general damages.

Punitive damages:
Well, this is the final type of damages, which

may be appropriate in a defamation case. Punitive or exemplary damages, on the other hand, are awarded in exceptional cases, in situation where the defendant's conduct is so malicious, oppressive and high-handed that it offends your sense of decency. They indicate the displeasure of the jury at the defendant's conduct and serve the societal purpose of punishing the defendant and deterring him from engaging in similar conduct in the future. Since punitive damages are damages over and above full compensation, they should be awarded only if they achieve some rational purpose. Even where a defendant's conduct merits the condemnation of the court, there's no need to award punitive damages if the compensatory damages themselves can't operate as punishment and deterrence. If, and only if, the compensatory award is inadequate in this regard is an award of punitive damages warrant. So, I will not, again, it's the same evidence you will be reviewing. There is evidence here that, considered very carefully, that could lead to an award of punitive damages but again, you have to apply these principles that I've just given you and you have to decide whether this is such a case, such an exceptional case that requires such an award of damages. We'll take a break now before I finish and we go to the questions. Not much left, but I guess it would be good for everybody and my voice to take a short break. Fifteen minutes.

...JURY RETIRES (11:18 a.m.)

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right, bring the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (11:39 a.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: All right. So, we're now addressing the issue of the questions. There's a book of questions, Mr. Dearden has referred to it and you've each been provided a copy and basically, this will be what you will use or your foreperson will use to provide the jury's verdict. You will note that Tab A, where - what you find in Tab A are the highlighted paragraphs one to eight of - which are find - found on Exhibits 3 and 4 and they have made - been made the subject of questions for you to answer in order to decide if the words are defamatory of the plaintiff, which was - which is the element which remains to be decided as in question and for each highlighted paragraph, you are asked to decide if the words complained of bear the natural and ordinary meaning alleged by the plaintiff and if so, whether reasonable men and women communicating the context of the article as a whole would understand that meaning to be, in fact, defamatory of the plaintiff. So, there's the statement, then there's the meaning that is proposed and then there's for you to answer the two question, where yes, that meaning is - that

you find that meaning to be and whether then that meaning is defamatory. So, it is your task to consider the natural and ordinary meaning of the words in each highlighted paragraph as set out in Tab A of the book of questions for the jury. To do so, you may use your own understanding of the natural and ordinary meaning of the words used, as well as any innuendoes or insinuation that may be drawn or inferred from them, so called false innuendoes. Now, in Tab B of the book of questions for the jury, you are asked to decide whether three of the highlighted paragraphs bear various extended or special meanings when published to members of the black community in Canada. These are alleged true or legal innuendoes and I have discussed this with you already. So again, you review the questions and decide and this is on the - what I just discussed with you in relation to Dean Nelson’s evidence. Tab C of the book of questions for the jury deals with whether the plaintiff has established, on a balance of probabilities, that the defendant acted with actual malice and this, naturally will be to - if that’s the case, whether you will grant aggravated damages. So, you must consider the definition of actual malice, which I have discussed with you already and consider the conduct of the defendant preceding publication of defamatory statements, the circumstances of the publication and the defendant’s subsequent actions, including the conduct of the defence up to and including the trial. Then you have Tab D

of the book of questions for the jury or the question you will need to answer when you decide the issues relating to damages, namely, the amount and the type of damages you may decide to award the plaintiff. So, for each category, there's a possibility for you to award an amount and to indicate it. Tab E of the book of questions, well, that's the general verdict possibility. You are, in a libel action, a jury has the option to deliver a general verdict instead of answering all of the questions that have been set out in Tab A. The more common practice is for you to answer the questions in Tab A, but you may choose to only deliver a general verdict by only answering the questions set out in Tab E of the book of questions for the jury. So, you find either for the plaintiff or defendant and then you decide, accordingly, the damages and the issue of - as set out at Tab E. That's an option you have, if you so choose.

Now, let me give you some final instructions. This is the end of my charge to you and I would like to conclude by again, mentioning your duties as juror in the jury room. When you go to your jury room, it is your duty to consult with one another and to deliberate with a view to reaching a just verdict, based on the facts as you find them and on the law as I have explained it to you, for you. You will be given all of the exhibits so that you may consider them in your room. Do not take a dogmatic position. Keep an

open mind. Listen and account in an impartial manner to what is said by your fellow jurors and put your own views forward in a reasonable way. I would remind you that your first task would be to select your foreperson. He or she will preside over your deliberations and will record your answers to the questions. As I have told you, any five of you can agree on one answer. It need not be the same five on all answers. Any five can agree on one answer and a different five on another answer. After you have retired to consider the verdict, it is the practice of this court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept the submissions and recall you after you have commenced your deliberation, there's always the danger of you placing undue emphasis on what I may say to you on your recall. You must not do that. You will consider what I may say then with what I am saying now as one complete instruction. If after you retire, you require any further instructions from me on any point, you need only indicate to the officer who will be waiting outside of your jury room. He or she will summons the Court so that you can have any such questions answered in court. Now, contrary - in a criminal trial, once the matter is given to the jury, the jury are sequestered. In other words, you are not to - a jury will not separate until they have reached a verdict. This is not the case in a civil matter. You will have to stay together at all times while you're

deliberating. That is all through the day, but once - when the time comes that - if you have not reached and verdict and it's time to go home, then you can all go home and come back the next day for a further day of deliberations. All right. So, I will ask the registrar to swear the officers, please.

GILLES DUBÉ AND ASPHE (ph) SANDOVAL: SWORN

THE COURT: Well, I wish you good deliberations. You may go.
CLERK REGISTRAR: All rise.
...JURY RETIRES (11:49 a.m.)
CLERK REGISTRAR: You may be seated.
THE COURT: Any submissions?
MR. DEARDEN: No, Your Honour.
DENIS RANCOURT : Bonjour, Monsieur le juge.
INTERPRETER: Hello, Your Honour.
LE TRIBUNAL : Bonjour.
INTERPRETER: Hello.
DENIS RANCOURT : Je sais pas si vous avez reçu un courriel que je vous ai envoyé hier.
INTERPRETER: I don't know if you received the email I sent you yesterday.
LE TRIBUNAL : J'ai lu ça ce matin. J'en ai fait part au dossier puis y'a été déposé comme une pièce, oui.
INTERPRETER: Yes, I read it this morning. I shared it on record and it was filed as an exhibit.
DENIS RANCOURT : Merci.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

bon, en tout cas. Okay. Je change de sujet. Donc, y'a Mireille Gervais. Ensuite, y'a une des étudiantes noires, qui était à l'université au moment où y'a eu - il s'est passé ces choses-là. Son nom c'est Hazel Gashoka et elle a été très perturbée par toutes ces affaires et elle est venue à la conclusion elle, que il y avait un vrai conflit parce que je me faisais poursuivre, etcétéra, que y'avait des opinions différentes et elle a fait un vidéo donnant son opinion sur la question. Je suis accusé de malveillance parce que j'ai parlé de ce vidéo, parce que j'ai mis un lien à ce vidéo. Donc, on va avoir ce témoin-là pour montrer qu'il y a pas de malveillance et pour montrer la perspective de l'étudiante sur cette question. Y'aura le témoin de professeur Henry Wong, qui a fourni un document important, qui est un courriel qu'il a envoyé à la plaignante et qui n'avait pas été montré par la plaignante pendant le processus, mais que j'ai pu obtenir à la dernière minute en faisait appel à ce témoin et donc, on va parler de ce courriel très important et puis, y'a aussi un autre expert, un troisième expert, qui s'appelle Jeremy Cooperstock, qui est un professeur de génie-électrique à l'Université McGill et vous allez vous demander, mais qu'est-ce qu'un expert ingénieur en technologie vient faire dans une cause en diffamation? Et la raison, c'est

que vous savez cette loi qui pourrait limiter cet article, parce que la, la, la limite a été passée, la loi était écrit en 1980.
INTERPRETER: So, you have the evidence before you that I am not a lawyer. My other witnesses, Mrs. Mireille Gervais, the Director of the SAC, who wrote the report, she will be another one of my witness. She will testify about her report and its drafting but she'll also testify about that Professor St. Lewis did not contact her before writing her report about the student report and that's an important issue at play because Mrs. St. Lewis claims that she did contact her. So, this is an important live issue to know that both of them can't be right. On the one hand, you have the testimony of one individual and on the other, so you - it's a most difficult question. On Mrs. Gervais' side, there's an email. There's also a document, a written document that supports majorly her position and it will be up to you to decide who's right. If - and all that, I'm doing - all right, I'll move on. So, there's Mireille Gervais and then there's one of the black students who was at the university at the time this occurred. Her name is Hazel Gashoka. She was quite taken aback by all this and she concluded that there was a real conflict because I was being persecuted. There were different opinions and she took a video of

the opinion. I am accused of malice because I spoke about that video, because I linked to that video. So, that witness will come to show there is no malice or was no malice and to show the student perspective on this issue. There will also be the professor, Henry Wong, who supplied an important document, an email he sent to the plaintiff, but wasn't disclosed by the plaintiff in the process of the - this case but I was able to obtain that email at the last minute. There's also another expert, a third expert, Jeremy Cooperstock, who is a professor at McGill in electrical engineering. What you're gonna say, "Good God, what will he come to testify about in a defamation suit?" You know the law that could limit because of the time bar. The light - the law was written on [*sic*] 1980.

LE TRIBUNAL : Il faut être prudent sur des témoins experts là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...jusqu'à temps qu'ils soient qualifiés.

INTERPRETER: You need to be careful, sir, on expert evidence issues.

DENIS RANCOURT : Oui. Je, je ne dirais rien sur ce qu'il va dire, mais la raison que y'a - il va y avoir deux témoins experts sur la question technologique, très pointue à l'Internet et tout ça, c'est parce que quand

la loi a été écrite, ça parlait de journaux, de télévision et de radio et depuis, y'a eu le développement de l'Internet. Alors, la question légale est, est-ce que l'Internet, c'est comme la radio, c'est comme les journaux, c'est comme un autre média vis-à-vis de la protection de cette loi-là? C'est une question légale et pour répondre à cette question légale, ça prend l'avis des experts qui nous parlent de cette technologie-là. Donc, vous allez subir deux experts qui vont s'affronter par rapport aux questions technologiques. C'est juste pour vous donner un aperçu de ça. Et je vais finir en vous donner - vous donnant quelques autres éléments. Vous savez la question de m'attaquer pour la malveillance est centrale à cette affaire parce que si j'ai été malveillant, si je n'ai pas été honnête, si j'été - si j'ai fait ça pour des raisons autres que les raisons de communiquer et de m'impliquer dans la politique raciale de l'institution, si j'avais d'autres motifs, j'été malveillant et si j'ai été malveillant, y'a deux conséquences importantes. Une, ma défense de *fair comment* n'existe plus et deux, il pourrait y avoir des dommages juste par le fait que j'été malveillant. De l'argent que j'aurais - que je serais ordonné à payer. Donc, on va passer beaucoup de temps à essayer de démontrer que je suis

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

marked.

EXHIBIT NUMBER 7: Volume 2(c) - produced and marked.

MR. DEARDEN: So, Your Honour has a copy. Mr. Registrar, you have a copy? Mr. Rancourt, do you have a copy?

DENIS RANCOURT : Oui, merci.

MR. DEARDEN: You do?

DENIS RANCOURT: Mm-hmm.

INTERPRETER: Yes, thank you.

MR. DEARDEN: And then Mr. Registrar, I'm gonna ask you to give Exhibit 5 to Professor St. Lewis, please. So, we're going to be looking at Exhibit 5, Your Honour, and members of the jury and Tab 2. Okay?

Q. So, Professor St. Lewis, before the break, you were talking about a correction that Mr. Rancourt did publish and Tab 2 contains the February 11th article that has that correction. So, can you just refer the jury to what you were speaking of? This time we have the document in front of us?

A. So, if you are on the second page of Tab 2 and you go down mid-way, just before the blocked in section, which shows indented, the ATI Records exposed dot, dot, dot. Just immediately before that, the first word in the second line of that paragraph is the change of the word untenured to tenured, that I was referring to earlier and then if you turn onto the next page, which has at the centre of the page the picture of Malcolm X and the Malcolm X video, and it says, more on the professional ethics and then immediately under that, in really tiny font is correction made on April 30, 2012, "non-tenured

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 14, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

jours ça. Vous pourrez préparer une petite motion là écrite puis me l'amener là.

INTERPRETER: But that's in two days. You can prepare a short motion in writing and bring it to me.

DENIS RANCOURT : D'accord.

INTERPRETER: Okay.

THE COURT: Okay.

MR. DEARDEN: The last last matter is, I've asked Mr. Rancourt to confirm the accuracy of two transcripts. One is the Malcolm X video that he's embedded in one of the articles in issue and the other is a radio interview that he gave on April 18th about the - dissecting the tort of defamation and to again avoid wasting time where he's gonna - I'm gonna cross him on those transcripts and for him to - I just don't wanna waste time like this, Your Honour. If he says, "Oh, no, page three is inaccurate.", and we're asking the jury to leave, there's no reason why he shouldn't be confirming the accuracy of those transcripts before he's crossed. I'm only gonna be using them so he's got lots of time.

DENIS RANCOURT : Okay, je vais les faire...

MR. DEARDEN: He's had lots of time. I asked him...

DENIS RANCOURT : ...un à la fois.

MR. DEARDEN: ...on May 2nd.

DENIS RANCOURT : Je vais les faire un à la fois. L'affi - le, le *transcript* d'un vidéo par Malcolm X, c'est le *transcript* d'un vidéo qui est - qui

fait partie intégrale du blogue dont on se plaint dans cette action et en diffamation, le contexte est tout. Le contexte est essentiel. Y'a aucun substitut pour ce vidéo, que de regarder le vidéo, qui dure trois minutes. Y'a aucun substitut. Il faut - quand le - quand on va montrer l'article dont on se plaint ici, en évidence, il faut le montrer au complet dans son contexte et ça inclut un vidéo ici, qu'il faut jouer. Et...

INTERPRETER: Okay, I'm going to deal with them one by one. One at a time. The transcript of a video by Malcolm X is a transcript of a video that is an integral part of the blog of which we're complaining in this suit. In defamation, the context is of everything. It's essential. There's no substitute for this video than to look at the video, which is three minutes in length. There's no substitute. You must, when we're going to show the article of which we're complaining here, in evidence, you have to show it entirely in its context and it includes a video that needs to be played.

LE TRIBUNAL : On verra ça dans le temps comme dans le temps, mais je comprends votre point...

INTERPRETER: Well, we'll deal with that and - when it's time. I understand your point...

DENIS RANCOURT : Et...

LE TRIBUNAL : ...oui.

INTERPRETER: ...yes.

DENIS RANCOURT : Et, et c'est pour ça que je ne

veux pas accepter un *transcript* parce que c'est comme si j'acceptais qu'on a pas besoin de voir le vidéo. Il suffit...

INTERPRETER: So, that's why I don't want to accept a transcript because it's as if I was accepting that we don't need to see the video.

LE TRIBUNAL : Non. Non, non, c'est pas le point. C'est pas le point. Le point, c'est pas qu'on a pas besoin de voir le vidéo. Vous pouvez même y référer vous-même dans le contre-interrogatoire ou quelque chose, mais la question, c'est pas ça. Là, c'est que...

INTERPRETER: No, that's not the point. That's not the point. The point is not that we don't need to see the video. You can even, you can even refer to it yourself in cross-examination. That's not the question.

THE COURT: What - so, if I understand, Mr. Dearden, you want to make - you want him to say that that transcript, that we find on his blog, is what?

MR. DEARDEN: Accurate. That it's been accurately transcribed so that we're not wasting our time...

THE COURT: So, it's not tampered with or anything like that.

DENIS RANCOURT : Okay.

MR. DEARDEN: I had it done by a court reporter.

DENIS RANCOURT : Donc, le - ce qu'il m'a envoyé par un *court reporter*, est même pas signé, est même pas certifié. Il veut que je fasse son

travail pour lui. Il veut que je - j'argarde - l'interview avec - au Japon qu'il parle là, ça dure plus d'une heure. Il voudrait que je m'asseois puis que je lise le travail d'un *court reporter* que je sais même pas son nom, qui a pas signé, qui a pas certifié le truc pour que je lui dise : « Oui, moi, j'accepte ça. » J'ai pas le temps de faire ça et, et...

INTERPRETER: So, what he sent me through a court reporter, it's not even signed, it's not even certified. He wants me to do his work for him. He wants me to - the interview with - in Japan, what he's talking about, is over an hour. He'd want me to sit a read a court reporter's work, don't know the name of the person, the court reporter didn't sign, didn't certify. He wants me to accept that. I don't have the time to do that.

THE COURT: Okay, well...

DENIS RANCOURT : ...c'est à lui de le mettre en preuve si il veut des *transcripts* de ça.

INTERPRETER: It's up to him to bring that up for evidence if he wants transcripts.

THE COURT: So, he doesn't want to do that. All right.

DENIS RANCOURT : Non.

THE COURT: So, insofar as the Malcolm, I don't think there should be any problem. It's not a long thing for the...

LE TRIBUNAL : Dans le cas du...

INTERPRETER: In the case of...

THE COURT: Obviously, in the case of the transcript, if you cross-examine Mr. Rancourt and he says, "I never said that.", then I don't know. You'll have to - we may be wasting a lot of time to show that it is and if, you know, at the end of the day, it's not useful but I...

MR. DEARDEN: We can play it live.

THE COURT: Hey?

MR. DEARDEN: Play it live...

THE COURT: We can play it live.

MR. DEARDEN: ...and put it up.

THE COURT: Sure.

MR. DEARDEN: He's put it up on the Internet.

THE COURT: Yeah, we can do that.

DENIS RANCOURT : Oui? Oui, j'ai, j'ai pas d'objection à ça. J'ai pas d'objection à le, à le montrer.

INTERPRETER: Yes, yes, I don't object to that. No objection to showing it.

MR. DEARDEN: But I'm using the transcript as well.

DENIS RANCOURT : Mais...

LE TRIBUNAL : Mais vous comprenez que il faut - je comprends que vous êtes sous vos gardes, mais il faut pas non plus exaspérer le jury là, monsieur Rancourt. Si ce qui est dans le *transcript*, vous savez que c'était exact ou la partie qui vous - auquel on vous a référé, c'est exact, je vois pas pourquoi que y'a un problème là tsé? Si c'est pas exact...

INTERPRETER: But you understand that - I

understand that you want to be careful but you don't want to exasperate your jury, Mr. Rancourt. If, if what's in the transcript, you know that it's exact or the part, part to which you've been referred is exact, I don't see why there'd be a problem. If it's not exact....

DENIS RANCOURT : Je l'ai - j'ai pas regardé le travail de son interprète et j'ai - j'ai - c'est même pas signé. C'est même pas - j'ai vu beaucoup d'erreurs dans, dans les travails de traduction.

INTERPRETER: I didn't see the work of his interpreter. It's not even signed. I saw a lot of errors. The translation work, I saw a lot of errors in it.

LE TRIBUNAL : Okay, vous voulez c'était un *interview* qui s'est fait en français?

INTERPRETER: You mean it was done in French?

DENIS RANCOURT : Non, non, c'est que je, je voulais dire le, le rapporteur. C'est un vidéo de trois minutes ou, ou, ou peut-être un peu plus ou peut-être un peu moins. Je sais pas. Monsieur Dearden vient de dire qu'il veut le montrer. Si il le montre et me dit : « Je parle de ça. » Et il, il me donne une feuille et dit est-ce que ça dit bien ce qu'il vient de dire? Je vais dire oui ou je vais dire non, dépendant...

INTERPRETER: Oh, no I meant the reporter. It's a three minute video, maybe more, maybe less, I don't know. Mr. Dearden says he wants to show

it. If he does, show it. And he says I'm talking about this and he says - and he gives me a sheet and says, "Is that what you said?" I can say yes, I can say no...

LE TRIBUNAL : C'était pour faciliter les choses, mais si vous voulez pas, ça règle le problème.

INTERPRETER: But it was to facilitate things - ease things. If you want or don't want, well, that's fine.

DENIS RANCOURT : Merci.

LE TRIBUNAL : D'accord. Bon. Est-ce que y'a - je pense qu'on a tout couvert? Parce qu'on avait couvert vos...

INTERPRETER: So, I think we've covered everything? Did we cover...

DENIS RANCOURT : J'aimerais juste passer en revue si on a tout couvert parce que j'ai...

INTERPRETER: I'd like to go over a list to see if we've covered everything.

THE COURT: Was there something else before we deal with...

MR. DEARDEN: No.

THE COURT: No? Okay. So, can we...

DENIS RANCOURT : Oui, oui, y...

INTERPRETER: Yes, yes.

THE COURT: Yeah?

DENIS RANCOURT : Y'avait, y'avait, y'avait des points que monsieur Dearden avait soulevés. Monsieur Dearden était - okay, non, y'a - je, je suis perdu là. Je m'excuse.

INTERPRETER: Oh, there was, there was, there were points that Mr. Dearden had brought up. Mr.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

figures publiques, qui se - qui, qui, qui ont une certaine influence, des intellectuels publics aussi. Ils s'ouvrent - ils s'ouvrent à ce type de critique, qui est cette critique-là et je vais - et une, une de mes experts, la professeure, la professeure Mercier va expliquer en quoi, c'est, c'est quelqu'un qui a deux doctorats, qui est professeure à l'Université Queen's, qui a un doctorat en linguistique, qui a écrit un article. On discute l'origine des mots comme le mot nègre, etcétéra, et qui explique l'impact que ces mots-là ont sur le psyché de la personne dans notre société. C'est une experte, sans aucun doute, et elle va expliquer que - elle va expliquer la logique pour expliquer que c'est absolument pas racisme à priorie pour une personne blanche de critiquer une personne noire en utilisant ce terme précis, qui a un sens précis et ça veut dire - ça veut dire une personne privilégiée d'un groupe racial, qui agit pour le groupe dominant de sorte à minimiser les efforts de ceux qui veulent se libérer, de ceux qui se plaignent, de ceux qui subissent du racisme, de sorte à minimiser ou de normaliser ça et ça, c'est le sens du terme « *house Negro* ». En français, y'a un terme semblable, roi nègre qui est utilisé au Québec, qui, qui a une historique, etcétéra. Donc, j'avais, dans ce blogue, expliqué en

plus le sens de ce terme. J'ai intégré ici, dans l'article blogue, ce vidéo que vous ne voyez pas ici à cause d'un problème technique, mais il y a un vidéo ici qui est un vidéo de Malcolm X, qui est celui - Malcolm X, c'est un des grands architectes des droits civils aux États-Unis et il est très connu au Canada. Il est très connu en Amérique du Nord. Malcolm X était un très grand personnage et il faisait cette, cette critique-là contre les collaborateurs noirs, qui étaient proches de l'administration des États-Unis. Il faisait cette critique-là d'eux. Ça veut dire précisément ça. Ça voulait dire autre chose pendant l'esclavage. Évidemment, c'était historiquement une autre période. Il faut adapter les concepts, mais c'est un terme actuel de nos jours qu'on utilise, qui est un vrai terme, qui est dans notre langage courant et qui veut dire précisément ce que ça veut dire par rapport à la politique raciale. Donc, à - donc, quand - après ça, y'a eu une période et en plus - oui, j'ai donc publié ce blogue que vous voyez là et j'ai immédiatement informé le [*sic*] professeur St. Lewis que j'avais publié ce blogue. J'ai envoyé un très court courriel à elle et au président Rock et j'ai dit, j'ai publié ce blogue à propos de vous, quelque chose comme ça. Je paraphrase, mais j'informe toujours - les gens que je

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

A. None.

Q. Okay. And as of today, has the defendant apologized to you for any of the statements that he's made in his two U of O Watch articles in issue in this action?

A. No, the, the defendant, Mr. Rancourt, has not apologized. He has not retracted any of these statements. The only thing that he has done and that was a year or so after it was originally posted, is he changed a single word. He was wrong when he thought I lacked tenure and he changed untenured to tenure.

Q. Which article are you referring to?

A. Just - I think the first – where have I seen this? This thing, I'm having.... I'm having trouble finding it. I know he referred to it.

Q. Exhibit 3?

A. Yes. Yeah, I'm just – am I on Exhibit 3? Yes, just a second, sorry. It's just the print is small. (Inaudible.)

Q. Sting 5.

A. Yeah. I'm just – he – this one, oh, because what I was looking for – my apologies, I was actually looking for the one with the correction, so I was looking at the bottom for the correction, the non-tenure to tenure but sting 5, he says that I'm non-tenured. This is what he said in originally in February 2011. What he changed subsequently, about a year after, is the word non-tenured, became tenured. And then in very tiny print he put – basically suggesting it's an editorial change. That's not – he didn't say I was wrong for this reason. I said it for this reason. There was no retraction, explanation, apology, context for the change and so it's,

marked.

EXHIBIT NUMBER 7: Volume 2(c) – produced and marked.

MR. DEARDEN: So, Your Honour has a copy. Mr. Registrar, you have a copy? Mr. Rancourt, do you have a copy?

DENIS RANCOURT : Oui, merci.

MR. DEARDEN: You do?

DENIS RANCOURT: Mm-hmm.

INTERPRETER: Yes, thank you.

MR. DEARDEN: And then Mr. Registrar, I'm gonna ask you to give Exhibit 5 to Professor St. Lewis, please. So, we're going to be looking at Exhibit 5, Your Honour, and members of the jury and Tab 2. Okay?

Q. So, Professor St. Lewis, before the break, you were talking about a correction that Mr. Rancourt did publish and Tab 2 contains the February 11th article that has that correction. So, can you just refer the jury to what you were speaking of? This time we have the document in front of us?

A. So, if you are on the second page of Tab 2 and you go down mid-way, just before the blocked in section, which shows indented, the ATI Records exposed dot, dot, dot. Just immediately before that, the first word in the second line of that paragraph is the change of the word untenured to tenured, that I was referring to earlier and then if you turn onto the next page, which has at the centre of the page the picture of Malcolm X and the Malcolm X video, and it says, more on the professional ethics and then immediately under that, in really tiny font is correction made on April 30, 2012, "non-tenured

was changed to tenured." And what I was saying is that there's no context for the reader – like I, I looked at that and I do not consider that an apology, an explanation or a retraction.

Q. Okay. And can we now go to Volume 1 of the Book of Exhibits? So, Exhibit 1, Volume 1.

A. Yes, I have that in front of me.

Q. I just want to make sure everybody does. And you earlier testified that you had tenure, were granted tenure in 2001. So, 10 years before this article was published by Mr. Rancourt?

A. Yes.

Q. And what is this letter that I'm looking at, at Tab 6?

A. This is the dean's formal confirmation that I have been granted tenure. The letter's dated October 3rd, 2001.

Q. Okay. And Professor St. Lewis, what involvement did you have in the termination of Mr. Rancourt's employment as a University of Ottawa professor?

A. None. None...

Q. And...

A. ...whatsoever.

Q. And what participation did you have in a labour grievance that was filed with respect to Mr. Rancourt's dismissal as a professor at the University of Ottawa?

A. I have no connection to him at all and none to the labour grievance or union matters that may have arisen for him. None at all.

Q. Okay. Now, switching topics, which is how you discovered that Mr. Rancourt had published Exhibit

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 5, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

LE TRIBUNAL : J'ai compris...
DENIS RANCOURT : Mon...
LE TRIBUNAL : ...votre point.
INTERPRETER: I've understood your point.
DENIS RANCOURT : Mon...
LE TRIBUNAL : C'est quoi votre deuxième point?
INTERPRETER: What's your second point?
DENIS RANCOURT : Mon point est que on m'oblige à défendre une motion où je ne sais pas, à l'instant, ce qui va être demandé dans cette motion-là.
INTERPRETER: My point is I'm being obligated to defend a motion where I do not know, currently, what is being sought in that motion.
LE TRIBUNAL : Prochain point?
INTERPRETER: Next point, sir?
DENIS RANCOURT : Et donc, je, je - c'est pour ça que je demande ce que je demande est la chose suivante : je demande que monsieur Dearden communique clairement, et à la Cour et à moi, ce qu'il va demander dans cette motion et les ordres qu'il va demander et que à partir de ça, j'ai le temps de préparer la motion et donc, je demande un ajournement raisonnable, suite à avoir été informé de ce que monsieur Dearden va demander dans la motion comme ordre.
INTERPRETER: So, that is why I am asking - why I'm seeking - I'm asking that Mr. Dearden

communicate clearly, and to the Court and to myself, what he's seeking in this motion, the orders he's seeking and from that, I have time to prepare my defence of the motion. So, I'm asking for a reasonable adjournment subsequent to having been advised of what Mr. Dearden is seeking in his motion.

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point?

DENIS RANCOURT : C'est ça mon point, Monsieur le juge.

INTERPRETER: That's my point.

LE TRIBUNAL : Ah, vous n'avez pas d'autres?

INTERPRETER: You don't have another one?

DENIS RANCOURT : C'est mon...

LE TRIBUNAL : On peut commencer avec – on va entendre donc monsieur...

INTERPRETER: So, we can start.

DENIS RANCOURT : Mais, j'ai, j'ai, j'ai fait une demande là, Monsieur le juge. Je vous demande...

INTERPRETER: But that's my point but I've made a request, Your Honour. I am asking you...

LE TRIBUNAL : Oui, c'est ça.

DENIS RANCOURT : ...de donner un ajournement...

LE TRIBUNAL : C'est au dossier. C'est au dossier et je dis qu'on procède maintenant avec cette demande d'injonction.

INTERPRETER: It's on the record. It's on

Robert M. Astley, [that the] injunction shall include...” and I won’t read that. Paragraph 36, “There will also be a mandatory injunction requiring the defendant to forthwith remove his blog postings...from the Internet, and any similar postings that refer to the plaintiff, directly or indirectly.” Paragraph 37, “The plaintiff’s motion is allowed. Orders to issue against the defendant as outlined above. In summary, for over six years and possibly more, Mr. Verdun has admittedly engaged in a campaign to discredit the plaintiff. The jury has spoken. It is time for this vitriolic campaign to end. He must also understand that the consequences for deliberately failing to comply with a court order or disobedience of such an order may lead to proceedings for contempt of court.” And it’s my – gonna be my...

DENIS RANCOURT : Excusez-moi, Monsieur le juge.
Juste une demande...
INTERPRETER: Excuse me, Your Honour.
MR. DEARDEN: No, no, please don’t.
DENIS RANCOURT : ...très rapide? J’ai, j’ai pas une copie des autorités devant moi. Est-ce que je pourrais avoir une telle copie? C’est juste ça parce que je, je ne peux pas lire le contexte. Je ne peux pas suivre. Je, je n’ai pas les autorités...

INTERPRETER: I have a very quickly [*sic*] request. I don't have a copy of the authorities before me. Can I have that kind of copy? That's all. Because I can't read the context. I can't follow along. I don't have...

LE TRIBUNAL : Pourtant vous aviez deux jours pour en trouver une copie. Elle est sur CANLII cette décision-là.

INTERPRETER: Why? You had two days to find a copy. It's on CANLII that decision.

DENIS RANCOURT : Oui, et je l'ai...

LE TRIBUNAL : Non, non. Écoutez, c'est...

INTERPRETER: No, no. Listen...

DENIS RANCOURT : Ce matin, je, je suis venu à grande épouvante pour arriver à temps. Je savais pas si on allait m'accorder une demi-heure ou pas.

INTERPRETER: I came in a hurry to arrive on time. I didn't know if I was going to be granted half an hour or not.

LE TRIBUNAL : Oui, on prend...

DENIS RANCOURT : Et je n'ai pas eu le temps...

LE TRIBUNAL : ...pas de chance. Non, non, vous aviez deux jours. Je vous ai dit qu'on était pour procéder puis là, vous – ça, c'est inque des mesures encore pour retarder le tout là.

INTERPRETER: No, no, you don't take a chance. No, no, you had two days. I told

with the plaintiff, directly or indirectly in any way or by any method. In ordering this term (which is broader than the term requested in the statement of claim) I rely on the evidence presented and on the inherent jurisdiction of this court." And I am also going to be making a similar request for such a term with respect to Professor St. Lewis, Justice Charbonneau, is that the defendant be restrained from contacting or communicating with Professor St. Lewis directly or directly [*sic*] in any way or by any method and...

DENIS RANCOURT : Donc, vous voyez que monsieur Dearden fait des demandes qui ne sont pas ni dans son *factum*, ni dans son *compendium of argument* et...

INTERPRETER: So, you see, his requests are neither in his factum nor his factum...

LE TRIBUNAL : Vous répondrez après qu'il aura fini. Merci.

INTERPRETER: You will reply once he'll be done.

MR. DEARDEN: Your Honour, can I request that if Mr. Rancourt interrupts my argument again, I think it's the fourth time now that you've told him to stop interrupting, that you ask him to leave the courtroom because this is just – it's just so unnecessary for him to do that. He's been told, make a note and make your response and he refuses to respect the

blogueur. Ça, ce n'est pas une mesure qui est raisonnable dans le contexte où on doit équilibrer le droit d'expression et réparer les dommages dans une société démocratique parce que ça m'empêche la possibilité de le faire d'une façon équilibrée et qui n'est pas diffamatoire, qui ne serait pas diffamatoire. Par exemple, je n'aurais pas le droit de dire, en citant un morceau de phrase, « Ceci a été dit. Ce n'est – c'était ou ce n'était pas légitime de dire ça. Le jury a trouvé que c'était diffamatoire. », comme les médias vont faire, qu'ils ont peut-être déjà fait maintenant. Ils vont faire exactement la même chose. On m'empêcherait d'agir comme membre des médias en tant que blogueur, que la Cour suprême a dit les blogueurs ont les mêmes droits d'expression que les médias de masse. Donc, ça serait une mesure qui serait contre les principes d'expression libre de la *Charte*, de, de, de, d'appliquer cette mesure-là. Le paragraphe deux, le paragraphe deux n'est pas dans le *Statement of Claim*, aucunement. C'est quelque chose qu'on vient de, de me donner à la dernière minute. Je n'ai pas eu le temps de le préparer et ce n'est pas dans le *Statement of Claim*, aucunement. C'est complètement nouveau. C'est un *ambush* comme j'ai dit tantôt. Et il y a eu, par rapport à ce paragraphe deux, je vais juste le lire rapidement, « *The*

that can be controlled. The order, the way it is presented here, is not specific. All the specifics must be argued from a legal standpoint. Are the specifics reasonable and legitimate in law? That was regarding paragraph four. Paragraph five reads as follows...

DENIS RANCOURT: "In the event that the plaintiff believes that the defendant is in breach of this order..."

DENIS RANCOURT : Alors, c'est important là. Il suffit, pour que cette clause soit satisfaite, que la plaignante croit – *believes* – c'est le seul test ici là.

INTERPRETER: This is important. It is sufficient for this – for the plaintiff believe - it's the only test here for this to be breached.

DENIS RANCOURT: "In the event that the plaintiff believes that the, that the defendant is in breach of this order, in addition to any remedy that may be available, the plaintiff can apply for an order requiring any person or company within the jurisdiction of this court, who has notice of this order, to remove or take down the articles containing the statements the jury has found to be defamatory, or that contains a hyperlink..."

DENIS RANCOURT : Là, encore, il suffit que ça contienne un *hyperlink to Exhibits 3 and*

4.

INTERPRETER: Once again, all you need is to have a hyperlink to Exhibits 3 and 4.

DENIS RANCOURT: "The plaintiff can also apply to expand or otherwise change the terms of this order on the ground that his - this order has failed or is failing to achieve one or more of its purposes."

DENIS RANCOURT : Okay. Ce paragraphe cinq n'était pas du tout dans le *Statement of Claim*. C'est complètement nouveau. C'est encore un autre paragraphe nouveau. J'ai pas eu le temps de – d'étudier la jurisprudence sur une telle affaire, que j'ai jamais vu avant. J'ai pas le temps de faire des arguments. C'est, c'est une ambuscade classique, comme j'ai dit au début, et même ce que je remarque en regardant ça, c'est que pourquoi est-ce que la Cour aurait besoin d'avoir cette ordre-là? Pour des raisons pratiques, je ne vois pas l'utilité d'une telle ordre. Est-ce que monsieur Dearden ne peut pas poursuivre en diffamation une tierce partie quand il veut? Est-ce que la plaignante ne peut pas faire ça? Oui. Y'a plein d'autres remèdes. Pourquoi est-ce que on veut mettre ici un ordre qui faciliterait, pour la plaignante, la possibilité d'avoir un autre ordre dans l'avenir? Je, je ne vois pas la logique légale de ça et je ne crois pas que c'est approprié d'avoir une telle

other remedies. Why do we want to have an order here that would facilitate, for the plaintiff, the possibility of having another order in the future? I do not see the logic behind - the legal logic behind this, and I do not believe it's appropriate to have such an order that is as wide and not defined. It is sufficient for the plaintiff to believe that there is a problem and the plaintiff can, without permission of the court, come and seek orders. It is sufficient her to believe it, not to demonstrate evidence. She believes something and she can come before the Court to seek an order. I think that is too wide and not reasonable. I do not know the case law on this but it is certainly not in the Statement of Claim. And the sixth paragraph, the sixth paragraph is very short and reads as follows...

DENIS RANCOURT: "The defendant is restrained from contacting or communicating with the plaintiff, directly or indirectly, in any way, by any method."

DENIS RANCOURT : Ce paragraphe six n'est pas du tout dans le *Statement of Claim*. C'est encore quelque chose de complètement nouveau. On a, on a sorti ça. Moi, je l'ai, je l'ai appris environ une heure qu'on voulait proposer une telle chose. Donc, ce n'est pas dans le *Statement of Claim*. J'ai déjà expliqué à la Cour, Monsieur le juge, que y'a

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 5, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

relation très personnelle avec la personne qu'elle diffamait; le connaissait personnellement; avait été – avait eu des relations d'affaire avec cette personne-là; se présentait en personne pour dire des choses à son sujet à des *meetings* et des choses comme ça. Il y a rien de ça ici. Je ne connais pas la Professeure St. Lewis. Je, je – j'ai jamais cherché à avoir des communications directes avec elle. Je n'ai aucun intérêt de faire ça. Il y a une fois au tout début de cette action où j'ai envoyé un courriel, où elle était en cc. J'ai envoyé à son avocat avec elle en cc parce que je voulais être certain que il voit ça. Tout de suite, monsieur Dearden m'a dit c'est – vous, vous ne devez pas communiquer avec ma cliente. Je n'ai plus jamais communiqué avec la plaignante à partir de ce point-là et c'était la seule fois. Donc, y'a, y'a, y'a une différence importante là. Monsieur Dearden a parlé de son test, que je dirais n'est pas un test, mais il a parlé des, des cas dans les cours de première instance là, deux branches et je veux adresser chacune de ces branches-là. Premièrement, il y a une chance que la personne diffame encore. Dans le cas qui est devant vous, jamais il y a eu une diffamation, autre que discuter l'article original. Si, si on veut considérer que c'est de la diffamation, ce que je n'accepte

pas. Jamais y'a eu autre propos que ça. Toujours, il y a eu que une discussion de la cause en diffamation vis-à-vis ce qui avait été dit, vis-à-vis ce qui se passait en cour. C'est la seule chose qu'il y a eu. Y'a jamais eu d'autres incidences ou d'autres contenus diffamatoires, quelques qu'ils soient, qu'on puisse imaginer, ce qui distingue ça des cas où on a appliqué ce test. Okay? Ça, c'est la première chose. Deuxièmement, même les choses que monsieur Dearden dit sont des évidences que j'aurais continué à diffamer, ne sont pas des diffamations parce que ce sont des reportages et des liens à des contenus qui sont déjà là et qui sont devant la Cour. Donc, le premier test n'est, n'est pas satisfait. Y'a aucune – y'a aucune raison de croire que je pourrais diffamer le Professeure St. Lewis à l'avenir. Le deuxième test, c'est qu'il y ait une possibilité que je ne puisse pas payer les dommages qu'ils soient attribués. Ça, c'est le deuxième test.

INTERPRETER: So, this was the 23rd of June 2011. It was very close after having received the Statement of Claim. So, it was a long time ago. What we must note here, if you want to ask the question of whether there is something inappropriate here, I accepted all the comments, be they negative or positive. So, I allowed a balanced report of

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P R O C E E D I N G S A T T R I A L

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quoted any case law where that kind of measure would have been applied, where all the articles have to be found or that have a link to the defamation complained of. I didn't see, in Mr. Dearden - what Mr. Dearden presented any case that dealt with the matter that way. So, I don't – won't discuss that point. Mr. Dearden has a - had the opportunity to do so, he didn't. Paragraph four of the order in question is read as follows...

DENIS RANCOURT: "The defendant is ordered to assist the plaintiff in obtaining the removal or take down of the statements of the jury - of the statements the jury has found to be defamatory from Internet search engine caches such as Google, any electronic database where the defamatory statements are accessible and other websites operated by third parties."

DENIS RANCOURT : Cette demande ou une demande semblable était dans le *Statement of Claim*. Elle était dans le *Statement of Claim*, mais le – la plaignante n'a présenté aucune cause où on avait accepté de faire une telle chose parce que une telle chose est essentiellement un - flou et impossible. On demande d'assister à faire quelque chose. Y'a beaucoup de problème avec ça. Premièrement, je n'ai pas de pouvoir sur Google. Je n'ai aucun pouvoir sur Google. Pourquoi je serais – on me demanderait

d'assister à ce que Google enlève quelque chose alors que je n'ai pas de pouvoir sur Google. En plus, Google n'a – n'est – a probablement pas son serveur en Ontario. Donc, c'est même pas dans la juridiction de, de la cour. Monsieur Dearden a argumenté que Google était en, en, en – au – en – à San Francisco. Moi, j'ai dit que Google avait un serveur en Ontario. Monsieur Dearden a, a, a émit un contre-expert qui dit : « Non, non, non, c'est, c'est complètement faux. » Si on accepte ce que monsieur Dearden dit, ça voudrait dire que Google n'est même pas en Ontario. Il faudrait que – non seulement je n'ai pas de pouvoir auprès de Google, mais Google n'est même pas dans la juridiction de la cour. Alors, ce – ça va loin cette affaire. En faite, je n'ai pas de pouvoir sur aucun des tierces partis et en plus, qu'est-ce que ça veut dire « *assist, assist* »? Il faut spécifier. C'est un ordre général. Si, s'il – si la Cour ne dit pas ce que ça veut dire, qu'est-ce que ça veut dire? Ça peut vouloir dire n'importe quoi. Monsieur Dearden va tout voir – toujours pouvoir dire que je n'ai pas respecté l'ordre parce que je n'ai pas suffisament assiste. Est-ce que y'a une barrière? Est-ce – qu'est-ce que ça veut dire? C'est complètement fou, par fou, flou. Donc, c'est un ordre qui n'a pas de sens et j'irais même

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C59074

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

APPEAL BOOK AND COMPENDIUM OF THE APPELLANT VOLUME I OF V

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